



Institute
and Faculty
of Actuaries

Indicative Sanctions

Guidance Note

by the Disciplinary Board of
the Institute and Faculty of Actuaries

January 2020

Contents

	Page
Purpose of this Guidance Note	3
Human Rights	3
When should this Guidance Note be used?	3
Section A: Introduction	4
Section B: Principles	5
• Summary of Available Sanctions	5
• Summary of available Sanctions flowchart	6
Section C: Process	7
• A Panel's approach to sanctions	7
• Method	7
Section D: Practical advice on the approach to be taken	8
• Assessing seriousness (including table of factors for culpability, harm, aggravating and mitigating factors)	9
• Particular sanctions	9

Purpose of this Guidance Note:

- To provide guidance to Adjudication Panels* (where a Case Report discloses a *prima facie* case of **Misconduct**) in determining sanctions in accordance with Rule 6.4 of the Institute and Faculty of Actuaries (IFoA) **Disciplinary and Capacity for Membership Schemes** (“the Scheme”).
- To provide guidance to Disciplinary Tribunal Panels and Appeal Tribunal Panels* in determining sanctions in cases where there is a finding of Misconduct as defined in Rule 4.2 of the Scheme.
- To assist those dealing with a Panel to know from the outset the approach likely to be taken when determining sanctions.
- To assist Interim Orders Panels when considering any application for an Interim Order.

This guidance does not amount to a prescriptive set of rules.

Human Rights

The IFoA promotes principles of equality and diversity in its work.

The IFoA works on the basis that the provisions of the Human Rights Act 1998 apply to its Panels. There is the right to a fair hearing within a reasonable time. The right to practice a profession is involved, and that forms part of the private life of a Member appearing before a Panel. Interference with that right is only permissible if it is proportionate. The Legal Adviser to a Panel will provide relevant guidance in relation to the law on Human Rights.

When should this Guidance Note be used?

- Following the determination that a case discloses a *prima facie* case of Misconduct at Adjudication Panel when that Panel considers which sanctions to invite a Respondent to accept.
- Following a finding of Misconduct at Disciplinary Tribunal or Appeal Tribunal Panel.
- At the stage when any Interim Orders are being decided.

* A “Panel” or collectively, “Panels”.

Section A: Introduction

The Scheme is part of the **IFoA Regulatory Strategy** in fulfilment of its Royal Charter responsibility for the regulation of its Members, as actuaries, in the public interest.

The aim of this Guidance Note is to promote proportionality, accountability, clarity, consistency, transparency and targeted decision-making regarding sanctions by all Panels operating under the Scheme. It does not override any provision of the Scheme.

Every case is fact specific and this guidance consists of guidelines only; it is not intended in any way to fetter the discretion of a Panel when determining sanctions. The exercise of its powers and the imposition of sanctions are matters solely for determination by a Panel, and Panels are not bound by this Guidance Note, or by any previous Panel determination. However if a Panel departs substantially from this guidance, it should take extra care to set out its reasoning.

Panels deal with a variety of cases. Their focus is to establish the seriousness of the Misconduct alleged and, in proved cases, fair and proportionate sanctions.

Reference to a “Member” includes a student or former Member in so far as the Scheme has jurisdiction.

Under the Scheme, Adjudication Panels may invite a Respondent to accept a sanction, Interim Orders Panels may make an order, Disciplinary Tribunal Panels may impose a sanction and Appeals Tribunal Panels may uphold, vary or rescind sanctions imposed by Disciplinary Tribunal Panels. In this guidance the phrase ‘imposition of sanction’ is used to mean all of these options.

The contents of this Guidance Note are reviewed at least every three years.

Section B: Principles

Summary of available sanctions

The primary objective of sanctions is not aimed at inflicting punishment upon a Member (though that may be their effect) but to protect members of the public, to maintain the reputation of the profession and to declare and uphold proper standards of conduct and competence.¹

A Panel should impose a sanction, or combination of sanctions, necessary to achieve those objectives.

Sanctions are imposed for Misconduct. Misconduct may occur as a result of work carried out as an actuary, or it may arise outwith an actuary's professional life. Serious personal Misconduct may result in it being inappropriate for the Member to remain within the profession. While being supportive of individual human frailty, and of the impact of mental illness, and fully accepting the possibility of redemption, the Panel will take a view as to whether or not such factors are material to its decision whilst also balancing its responsibility to take the public interest into account.

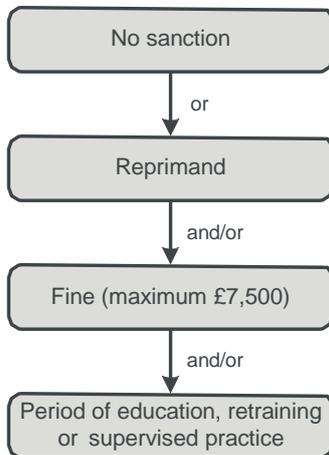
Whilst making its own decision, a Panel will have due regard to action already taken in relation to any determination of Misconduct by other bodies (such as courts and regulators). For example, in Criminal Court cases a copy of the court record (such as a memorandum of conviction) will be requested and in some cases, it may also be appropriate to request the sentencing remarks to be considered in conjunction with the sentence imposed by the Judge. Any sanction imposed by a Panel is separate from disposal by other bodies (such as courts or other regulators) but a Panel may, where relevant, take account of other such disposals.

In balancing its discretionary powers in light of any other action taken, a Panel should bear in mind the regulatory and disciplinary purpose as well as the intent behind the Scheme to act in the public interest.

¹ Bolton v The Law Society [1994] 1 WLR 512

Summary of available Sanctions flowchart

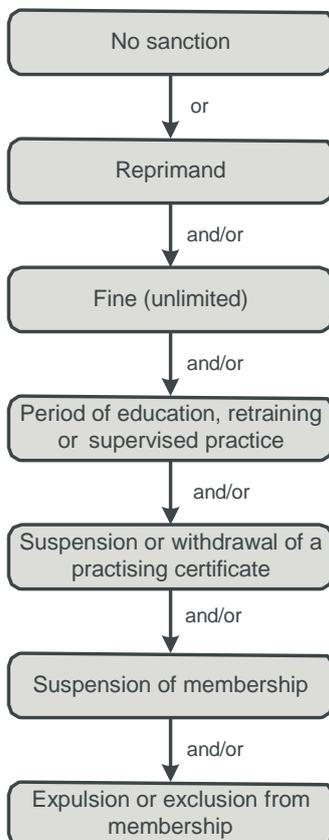
Adjudication Panel Sanctions



Interim Orders Panel Sanctions



Disciplinary Tribunal Panel Sanctions



Section C: Process

A Panel's approach to sanctions

The following is the recommended approach²:

- (1) Assess the seriousness of the Misconduct.
- (2) Keep in mind the purpose for which sanctions are imposed.
- (3) Determine the sanction(s) which is/are the most appropriate to the Misconduct in question.
- (4) Bear in mind any and all the aggravating and mitigating factors before final conclusions.

Method

A Panel should always start by considering whether any Misconduct should result in a disciplinary sanction being imposed. It is a salutary experience to appear before one's profession's disciplinary tribunal, and the finding of Misconduct, and the attendant publicity, sometimes, is an effective and efficient sanction in itself. As set out below, it would be unusual not to impose a sanction where the actions were sufficiently serious to amount to Misconduct and so the reasons for such a decision should be carefully considered and expressed clearly and succinctly.

If a Panel decides upon a sanction it will start by considering the least severe sanction. If it finds that sanction inadequate, it will consider the next sanction up and so on. When a Panel has made a provisional decision, it will then consider whether it would be disproportionate to impose the next more serious sanction before coming to its final conclusion as to sanction.

More than one sanction can be imposed. For example, a Panel may consider that the seriousness of the Misconduct requires a fine to be imposed, but that to assist in ensuring that there is no repetition of the Misconduct there should also be a period of supervised practice.

The sanctions imposed must always be proportionate to the Misconduct found proved.

² Fuglers and Others v Solicitors Regulation Authority [2014] EWHC 179

Section D: Practical advice on the approach to be taken

Where there are multiple allegations based on similar facts, in deciding on sanctions a Panel will look at whether the overall charge of Misconduct is found proved.

Where there are several different strands of evidence a Panel may combine a variety of sanctions directed at addressing the specific Misconduct, but should bear in mind proportionality at all times.

In deciding what sanctions (if any) to impose, a Panel should ensure that the sanctions are proportionate, weighing the interests of the public against those of the Member. Proportionality is not a static concept and will vary according to the nature of the Misconduct and the background of the individual matter. For example, unless considered by the Panel to be serious enough, a first-time breach of practising requirements is unlikely to warrant a suspension or expulsion/exclusion. However a similar breach, committed many times without remorse or any attempt at remediation might warrant consideration of suspension or expulsion. Repetition of relatively minor breaches may indicate a significant lack of organisational ability, integrity or insight, which could represent a risk to the public and undermine confidence in the profession.

Sanctions should be reflective of the seriousness and circumstances of Misconduct - for example, whether the motivation was for financial gain. The sanctions imposed should be no more onerous than the circumstances require, being proportionate punishment in any particular case. A Panel should consider the totality of the Misconduct and the available sanctions when considering proportionality.

The factors listed on the following pages are not in any form of hierarchy. It is for a Panel to decide on the weight to be allocated to each factor. The factors listed are not exhaustive and not all factors may be applicable to a particular case. There may be other factors which are not listed that are also relevant and important.

Assessing seriousness

Noting that this cannot be a comprehensive list, factors to be considered include:

The Respondent's culpability	This includes factors such as motivation, whether the action or inaction was spontaneous or pre planned, whether it was a one off incident or a course of action, and the level of experience of the Member.
The harm caused by the Misconduct	This includes the perceived damage to the reputation of the profession, the extent of any financial loss, the extent of any remedial work required as a result of the Misconduct, and the foreseeability of the harm that occurred. The further the departure from professional standards the greater the harm to the reputation of the profession.
Aggravating factors	Did the Misconduct result in a criminal charge or regulatory breach? Where matters involve a lack of integrity, dishonesty or breach of trust this should almost always be considered an aggravating factor.
Mitigating factors	Matters such as whether the actions of others contributed to the Misconduct, the extent and swiftness of remediation, the level of insight shown, the degree of cooperation of the Member, how promptly the Member self reported, and whether the Misconduct can truly be considered an aberration. Note: matters of personal mitigation are not relevant to the seriousness of the Misconduct but are relevant to the question of proportionality of any given sanction for the Misconduct found proved.

Particular sanctions

More than one sanction may be imposed. Guidance about such cases and the approach to cases where there are multiple charges on similar facts, or several different charges, has been set out in Sections C and D above.

No sanction – it will be an unusual case where no sanction is imposed following a finding of Misconduct. Where a Panel so decides, as with its reasoning for determining any sanction, it should state its reasons for not imposing a sanction carefully, in particular stating whether there are mitigating circumstances making it inappropriate to impose a sanction or that there is personal mitigation making it disproportionate to impose a sanction. This is likely to be appropriate only where the Misconduct presents no risk to the public, and there are no ongoing or lasting effects in relation to the Misconduct.

For example imposing no sanction may be appropriate in cases where (a) the Member has fully acknowledged the breach and (b) the effects of bringing disciplinary action have already had a significant impact on the Member's reputation or practice.

Reprimand – this is the least sanction that can be imposed, and is appropriate on its own for cases where, for example, there was a single act, that act was an aberration, where harm is limited, or where there are extensive mitigating factors, and no sign of a deeper attitudinal problem.

Fine – a nominal fine may undermine public respect for the regulatory process. In considering the amount of a fine, a Panel should bear in mind factors such as the level of harm caused, the value of money, the sums awarded in other forums (such as personal injury claims) and other comparative evaluations, so that the level of the fine may reflect in the eyes of the public and the membership the overall seriousness of the Misconduct.

If the Member wishes his or her personal financial circumstances to be considered then it is his or her obligation to set out those circumstances before a Panel fully, with documentary evidence in support. A Panel should take these into account in assessing the level of a fine.

A period of education, training or supervised practice – this is intended for cases where an error or deficiency on the part of the Member is capable of being so addressed and to give the public confidence that a shortcoming in the performance of a Member is being addressed.

If the Panel considers that education or retraining is an appropriate sanction, it will specify what the concerns are that education and/or retraining should address and what the learning outcome and objectives are in relation to these concerns. The Panel may also specify any type of course or learning material that should form part of the education or training, but there is no requirement or expectation to do so. Within the period of time specified by the Panel, the Respondent is required to submit a training proposal to the IFoA. This training proposal will be approved by the IFoA and monitored to ensure it has been completed. The IFoA will refer the matter back to the Panel if the Respondent fails to satisfactorily meet the education and/or retraining sanctions.

If the Panel considers that supervised practice is an appropriate sanction, drafting should be precise and, as a minimum, should define the closeness of the supervision required, over what period supervision should occur and the timescales for compliance.

Detailed guidelines relating to such sanctions are set out in the Guidance Note: Sanctions involving Education, Retraining and Supervised Practice.

Suspension or Withdrawal of a Practising Certificate – this is appropriate where the Misconduct is so grave that a financial penalty does not sufficiently reflect the gravity of the Misconduct. When considering such a sanction it must be recognised that the making of such an order may have a financial impact on the Member. The primary purpose of imposing such a sanction is to act in the public interest and to maintain the reputation of the profession.

Suspension is the order where the period ends within the term of the current certificate; withdrawal where the period extends beyond the term of the current certificate. The potential impact on the Member's income may be relevant to questions of costs, or if a fine is also imposed.

Expulsion or exclusion – this should be the sanction where, and only where, the Misconduct found proved is of such gravity that the reputation of the profession or the public interest requires that the Member is no longer able to practice or claim membership of the profession. Exclusion is the order where membership has already ceased; expulsion where membership is current.

In deciding whether to exclude or expel a Member a Panel will consider the effect that allowing the Member's name to remain on the register will have on the public's trust in the reputation of the profession.

Serious Misconduct in a Member's personal life may lead to expulsion or exclusion as well as Misconduct in practice. Dishonesty will usually lead to expulsion or exclusion, but it is important to bear in mind that there is a small residual category of cases where the particular circumstances are such that the well informed member of the public would not regard dishonesty as a bar to continued membership of the profession. If a Panel so decides not to expel or exclude it will need to set out its reasons with particular clarity.

When making an order that interferes with or terminates the right to practise, a Panel should consider the effect on the income of the Member when deciding on the level of any fine also imposed, and in considering costs.

CPD – Separate guidelines relating to CPD infringement cases are set out elsewhere on the website.

Disciplinary Board
January 2020