



Guidelines Disciplinary Sanctions

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1: INTRODUCTION

The Institute of Chartered Accountants of Trinidad and Tobago (“the Institute”) has developed this guideline on the use of sanctions to assist in its disciplinary and appeal process.

This “Guideline for Disciplinary Sanctions” is for use by the Disciplinary Tribunal (the Tribunal”) and Appeal Committee (“the Committee”) when they are considering which sanction to impose upon an individual or firm. The Tribunal and Committee should refer to this guidance in every case when considering what sanction or combination of sanctions, if any, to impose on an individual or a firm.

This guideline is a ‘living document’ which will be updated and revised when the need arises.

This guideline also aims to promote consistency and transparency in decision making by the Tribunal and Committee. It is intended to ensure that all parties are aware, from the outset, the approach to be taken by the Tribunal or the Committee in relation to a sanction. It will also provide guidance on mitigation evidence, references and testimonials.

Each case will be judged on its own facts. Members of the Tribunal and Committee will exercise their own judgement in making decisions but having regard always to the regulatory framework set out by the Institute contained in the ICATT Rules and Regulations 2018 and any other relevant guidance. Accordingly, this guideline will:

- i. Describe the general principles the Tribunal and the Committee should take into account when considering the appropriate sanction;
- ii. Set out the range of sanctions available;
- iii. Describe the relevant factors to be considered and/or decide in relation to the various sanctions; and
- iv. Suggest the criteria to apply when considering the seriousness of a particular case.

Nothing in this guideline should be treated as a source of legal advice to any user. When appropriate, the independent legal adviser will advise the Tribunal or the Committee on questions of law, including questions about the use of this guideline. Individuals and firms are recommended to obtain their own legal advice.

2: THE RULES AND REGULATIONS

Liability to disciplinary action arises under Part 12 of the Rules where a member of the Institute is suspected or alleged to have committed an act of improper or unprofessional conduct. Based on Rule 12.2 an 'act of improper or unprofessional conduct' includes:

- a) in connection with professional duties, work or conduct of practice, acting in an incompetent, negligent, inadequate or improper manner;
- b) misconduct in the course of carrying out professional duties or otherwise;
- c) contravention of any rule, regulation, guideline or policy of the Institute;
- d) contravention of any principle, requirement or condition in the Code of Ethics or ICATT's Accounting and Auditing Standards;
- e) contravention of any of the statutory duties and controls pertaining to the regulation of accountants;
- f) being convicted of an offence which renders the offender unfit to act as an accountant;
- g) obtaining registration by fraud or misrepresentation;
- h) over-indebtedness under insolvency law, including making or seeking to make any composition or arrangements with creditors;
- i) failure to satisfy a judgement debt without reasonable excuse for a period exceeding 3 months following the date of entry of that judgement debt; and
- j) any act or omission which brings, or is likely to bring discredit to the respondent, to the firm with which he is associated, to the accountancy profession, or to the Institute.

Additionally, based on Rule 12.10.10 the following shall be conclusive proof of misconduct:

- a) The fact that the respondent has pleaded guilty to, or been found guilty of, any offence or conduct detrimental to the Institute or the accountancy profession before a court of competent jurisdiction or judicial body in Trinidad and Tobago or any other country where such court's judgements are in the opinion of Council (or respective Committee) relevant.
- b) The fact that the respondent and the relevant firm have been found to have acted fraudulently, dishonestly, negligently or incompetently before any court of competent jurisdiction or judicial body in Trinidad and Tobago or in any other country where such a determination is in the opinion of Council (or respective Committee) relevant.

Unless there is a specific Rule or Regulation that relates to the alleged conduct (for example, having been disciplined by another professional body) then Rule 12.2 may be engaged. Each allegation will normally be expressed by reference to the conduct specified in one of the Rules. The Tribunal and Committee must consider based on the case presented to them whether they find that the acts or omissions are of sufficient gravity to amount to the allegation.

3: POWERS AVAILABLE TO THE DISCIPLINARY TRIBUNAL AND THE APPEALS COMMITTEE

In relation to the Disciplinary Tribunal, Regulations 7.1 to 7.5 of Schedule 4 provides the powers of the Disciplinary Tribunal. They are as follows:

7.1 Where a Disciplinary Tribunal is satisfied that an act of improper or unprofessional conduct has been proven against the respondent, it may in its discretion make one or more of the following orders:

- a) A reprimand or admonishment. Warning letters would be sent to both the member and the relevant firm.
- b) Require the member to do participate in further educational or remedial training as directed.
- c) Designate corrective action necessary for him to remain a member of the Institute.
- d) Recommend corrective action to the relevant firm.
- e) Payment of restitution to the complainant, which may include a waiver or reduction of fees.
- f) A fine that is just and reasonable considering costs
- g) Suspension from any rights or privileges as a member of the Institute for a period not exceeding 2 years.
- h) Revocation of membership in the Institute.
- i) Withdrawal, suspension, or the attachment of conditions to the relevant member's practising or auditing certificate.
- j) Disqualification from obtaining a certificate for a specified period or until the occurrence of a specified event.

7.2 Where a Disciplinary Tribunal is satisfied that an act of improper or unprofessional conduct has been proven against a Registered Graduate or Student of the Institute, it may in its discretion make one or more of the following orders:

- a) A Reprimand or admonishment. Warning letters would be sent to both the Registered Graduate or Student.
- b)
- c) Require the Registered Graduate or Student to undergo educational or remedial training as directed.
- d) Declare the Registered Graduate or Student ineligible or disqualified for such period as shall respectively be specified in the order to sit for an examination or examinations of the Institute (or such part or parts thereof) as shall also be specified in the order.
- e) Declare that a period, which shall be specified in the order, shall not be reckoned as part of the Registered Graduate's or Student's approved accountancy experience for the purposes of the Institute's Rules and any regulations made pursuant thereto.
- f) Remove the Registered Graduate or Student from the Graduate or Student Register.

7.3 In addition to the powers set out above, the Disciplinary Tribunal may communicate with any respondent and relevant firm with a view to assisting them with or alerting them to problems

identified by the Tribunal, and may advise them to obtain advice from a source specified by the Disciplinary Tribunal.

7.4 The Disciplinary Tribunal may direct that the respondent pay or contribute such sum by way of costs to the Institute as the Disciplinary Tribunal considers appropriate.

7.5 In considering monetary sanctions, in particular fines to be imposed and costs orders, the Disciplinary Tribunal shall give consideration, including but not limited to, the following:

- 1 that the object is not to penalise, but to promote the interests and objects of the Institute and the accountancy profession;
- 2 the issue of proportionality;
- 3 the conduct of the Member during the course of the proceedings, and in particular whether such conduct facilitated the efficient disposition of the case; and
- 4 any prior relevant disciplinary record of the member

The Disciplinary Tribunal also has the power to deal with preliminary issues under Regulations 6.1 and 6.2 of Schedule 4. However, the said powers are limited and specific in nature and mainly deals with procedural issues.

6.1 A Disciplinary Tribunal may conduct a preliminary hearing to decide interlocutory and preliminary matters.

6.2 At a preliminary hearing consideration may be given but not limited to the following:

- a) Simplification or clarification of the issues in the proceedings;
- b) Disclosure of documents;
- c) Facts or evidence that may be agreed upon;
- d) Identifying any issues as to admissibility of evidence;
- e) Amendments to the complaint/statement of allegations or response;
- f) Identifying any preliminary objections;
- g) Scheduling the proceedings;
- h) Giving directions for the conduct of the proceedings and the procedures to be adopted;
- i) Resolution of any or all of the issues in the proceedings; and
- j) The hearing of arguments orally or by documents or a combination of both.

In relation to the Appeal Committee, Regulations 10.1 and 10.2 of Schedule 5 sets out the orders it could make. They are as follows:

10.1 In the case of an appeal against one or more of the findings or orders of an Investigation Tribunal, a Disciplinary Tribunal, the Licensing Committee or the Council, the Appeals Committee may do any one or more of the following:

- a) Affirm or vary any findings.
- b) Confirm the order, with or without modification.
- c) Affirm, vary, rescind or substitute any order.

- d) Quash the order and make such order as it thinks appropriate having regard to all the circumstances.
- e) Refer the matter back to the tribunal, committee or Council for re-hearing in its entirety or on a particular issue.

10.2 Where the Council has appealed against a decision of an Investigation Tribunal on the grounds of public interest, the Appeals Committee may:

- a) Affirm the decision of the Investigation Tribunal.
- b) Order that a new Investigation Tribunal re-consider the matter.
- c) Refer the matter to a Disciplinary Tribunal for adjudication.

Prior to making the above decisions, the Appeal Committee also has the power to consider addition and/or fresh evidence by virtue of Regulation 9 of Schedule 5 which provides as follows:

9. The Appeals Committee shall be entitled to admit additional evidence which was not before the Tribunal, Committee or Council whose decision is under appeal where the additional evidence was not available at the time of the matter appealed against and such additional evidence is relevant to the appeal. The Appeals Committee may give directions as to the matter and time within which such evidence is to be submitted.

Moreover, the Appeals Committee has the power to publish their order or decision if (Regulation 13 of Schedule 5):

- a) A successful appellant or relevant firm so requests; and
- b) Where such findings and orders can provide guidance or directions, promulgate best practice or clarify issues of uncertainty which may be of benefit to Members or the public as a whole.

[REDACTED]

Purpose

As stated above, the Tribunal and the Committee should always bear in mind that each case is different and they should be decided on its own set of facts. Accordingly, when considering what sanctions, if any to apply, the Tribunal and the Committee must have regard to both:

1. The public's interest; and
2. The member's interest.

In relation to the public interest, it is a settled principle of law that the purpose of sanctions issued by a professional regulatory body is to:

- a) protect the public interest
- b) maintain public confidence in the profession
- c) maintain proper standards of conduct

The purpose of the Tribunal and the Committee is, therefore, not simply to discipline the individual or firm for any wrongdoing of which he or it may be culpable, but to protect the public interest and maintain the reputation of the profession. Therefore, in carrying out these roles the Tribunal and the Committee is maintaining public confidence in the profession.

The public interest must be at the forefront of any decision on sanction and this includes the collective need to maintain the confidence of the public in the accountancy profession and the need to declare and uphold proper standards of conduct and performance.

Proportionality

In deciding what sanction is appropriate, the Tribunal and the Committee needs to demonstrate a considered and proportionate balance between the interests of:

- (1) the individual/firm;
- (2) the interest of the Institute's membership as a whole;
- (3) the public interest;
- (4) the seriousness of the case; and
- (5) any mitigating factors in the case.

In any event, the Tribunal's or Committee's interference with a member's professional standing and ability to practice must be no more than the minimum necessary to uphold the public interest. Accordingly, the Tribunal and the Committee would be require to take a "bottom up" approach when ordering a sanction since acting proportionately requires the Tribunal and the Committee to consider all the sanctions available to them in ascending order of seriousness.

The Tribunal and the Committee, prior to finalising its decision on a sanction or combination of sanctions, should always satisfy themselves the sanction imposed is sufficient and no more than is necessary to achieve its intended purpose.

Also, when the Tribunal or the Committee is imposing the relevant sanction, they should inform the individual or firm the reason for their choice of sanction.

Mitigating and Aggravating Factors

As part of a proportionate decision-making process, the Tribunal and 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 at the backdrop of the fundamental purpose of sanctions as set out above.

There are two types of mitigating and aggravating factors which will affect the sanction imposed in a case:

- A. Factors which pertained at the *time of the misconduct*, which should be considered when forming a view of the seriousness of the case;
- B. Factors pertaining to *current circumstances*, which become relevant when the Tribunal or the Committee goes on to consider which sanction or combination of sanctions is appropriate.

Mitigation can be considered under the following categories (these are not exhaustive):

- Evidence of the relevant member's adherence to good practice;
- Evidence of insight and understanding and efforts made to address the failing and/or wrongdoing;
- Personal mitigation, such as periods of stress, illness, level of support if in workplace.

Mitigation can be presented by way of personal evidence, references and testimonials.

Aggravating factors may include (again the list is not exhaustive):

- Lack of insight;
- Harm or adverse impact;
- A pattern of misconduct over a period of time;
- Previous disciplinary history.

The general rule is that where any matter is listed as a mitigating factor, the converse should be treated as an aggravating factor, and vice versa.

The Tribunal and 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 consider when assessing credibility are set out in below in relation to references and testimonials.

Guidance on considering references and testimonials

In relation to mitigation presented by way of references and testimonials, the Tribunal or the Committee must first consider whether these are genuine and can be safely relied upon. Factors relevant to this consideration may include:

- a) Has ICATT 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 Tribunal or the Committee?
- e) Is the author appropriately qualified to comment on the matters that have formed the basis of the allegations?
- f) To what extent does the author address the matters that inform the factual allegations and

concerns that flow from those allegations?

- g) Where appropriate, is the reference on headed paper?

The Tribunal and the Committee will give such weight to references/testimonials as is appropriate in the circumstances of the case.

Reasons

The Tribunal or 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.

It is important that the Tribunal's or 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).

5: DESCRIPTION OF THE SANCTIONS AVAILABLE

In this section, reference to a member includes reference to students, registered graduates, members and firms where indicated. Please note that the sanctions available to the Tribunal or the Committee for students, registered graduates, members and firms differ in some respects from those for members (for example, students and registered graduates may not be fined), but the principles behind them are the same.

The Tribunal or the Committee may make any one or more of the following orders, except that an admonishment, a reprimand and a severe reprimand cannot be combined with each other (see Regulations 7.1 and 7.2 of Schedule 4 of the ICATT Rules and Regulations 2018).

5.1 No further action

In all cases, the Tribunal or the Committee may decide that the appropriate 'sanction' is to take no further action. For example, where the breach took place many years ago, the public is not at risk and there would be no purpose served by ordering sanctions. However, if the Tribunal or 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 the basis for the decision. This is the lowest sanction available to the Tribunal and the Committee. This sanction is available to students, registered graduates, members and firms.

5.2 Admonishment

This sanction is available to students, registered graduates, members and firms. This is the second lowest sanction that can be applied by the Tribunal or the Committee. An admonishment may be appropriate where the conduct is at the lower end of the spectrum, but the Tribunal or the Committee, nevertheless, wishes to indicate that the behaviour was unacceptable.

Relevant factors to take into consideration are (this list is not exhaustive):

- a) evidence of no loss to the client;
- b) evidence of no loss to members of the public;
- c) evidence of member's understanding and appreciation of failings;
- d) conduct was an isolated incident;

- e) early admission of the facts alleged;
- f) insight into failings;
- g) conduct which was not deliberate;
- h) genuine expression of regret;
- i) corrective steps taken promptly;
- j) subsequent work satisfactory;
- k) relevant and appropriate testimonials; and
- l) no previous disciplinary infractions.

Before making a final decision having considered the general principles and factors above, the Tribunal or 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. If it considers this sanction (on its own or combined with any other order it could impose) is sufficient, then the Tribunal or the Committee must stop at this point and impose this sanction. 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.

5.3 Reprimand

This sanction is available to students, registered graduates, members and firms.

A reprimand is appropriate where the conduct is of a minor nature and there is no continuing risk to the public. There is evidence of the member'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 noted that this list is not exhaustive:

- a Willingness to comply with directions and advice provided by ICATT;
- b
- c Conduct was not in deliberate disregard of professional obligations;
- d
- 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 of culpability.

Having considered the general principles and factors above, the Tribunal and 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.

5.4 Severe Reprimand

A severe reprimand is appropriate where the conduct is of a serious nature but there are circumstances of the case or mitigation advanced which satisfy the Tribunal or the Committee that there is no continuing risk to the public, and there is evidence of the member'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 noted 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) Acknowledgement of shortfalls;
- d) Genuine expression of regret/apologies;
- e) No previous disciplinary infractions;
- f) No repetition of failure/conduct — it was an isolated incident;
- g) Rehabilitative/corrective steps taken to remedy the conduct and ensure future errors do not occur;
- h) Relevant and appropriate references in relation to the matter; and
- i) Co-operation during the investigations stage.

Having considered the general principles and factors set out above, the Tribunal and 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 Tribunal or 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. If the Committee considers a Severe Reprimand (combined with any other order it could impose) is insufficient, it should consider the next available sanction.

5.4 Education and Training

This sanction is available to students, registered graduates, members and firms and it is aimed at improving the performance of performance of individuals and firms in the accountancy profession. The Tribunal or the Committee may impose this sanction to enable the individual or firm to sharpen its skills, practices, attitude and knowledge in the performance of their functions to avoid any future occurrence of mistakes and/or errors that are subject matter of the complaints.

Having considered the general principles and factors set out above, the Tribunal and the Committee must decide whether Education and Training is a sufficient sanction, either on its own or in combination with any other order available under the rules. If the Tribunal or 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. If the Committee considers Education and Training (combined with any other order it could impose) is insufficient, it should consider the next available sanction.

5.5 Corrective action

This is applicable to members and firms. The Tribunal or the Committee may require the member or firm to make certain improvements in its accounting or auditing processes and procedures to eliminate and/or to avoid any future infractions. This sanction is designed to ensure quality assurance and it focuses on the systematic examination of the root causes of the identified problems or identified risks in an attempt to prevent their recurrence.

The Tribunal or the Committee may impose this sanction on a member to require them to retain their membership with the Institute and imposed where the firm has failed to perform and/or act in accordance with the relevant accounting or auditing practices and procedures.

Having considered the general principles and factors set out above, the Tribunal and the Committee must decide whether Corrective Action is a sufficient sanction, either on its own or in combination

with any other order available under the rules. If the Tribunal or the Committee decides that a Corrective Action (on its own or combined with any other order it could impose) is sufficient, it should stop at this point and impose this sanction. If the Committee considers Corrective Action (combined with any other order it could impose) is insufficient, it should consider the next available sanction.

5.6 Restitution

The Tribunal or the Committee may order the member or firm to pay compensation to the complainant to reflect any inconvenience suffered because of the member's or firm's failure to observe proper standards. This could be reimbursement of costs suffered (for example, if another accountant had to be employed to rectify the member's errors) or compensation for time spent or inconvenience suffered. 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. Accordingly, complainants should pursue financial claims not through the Institute's disciplinary process but through the appropriate legal channels.

This sanction is not applicable to registered graduates or students.

5.7 Waiver of fee

The Tribunal or the Committee may order the member or firm to waive or reduce their fees charged to or received from the complainant, where the services provided or the conduct of the member or firm is below acceptable standards. Similar considerations apply in relation to amounts already claimed through other channels and the means of the member.

This sanction is not applicable to registered graduates or students.

5.8 Fine

A fine may be imposed on its own or together with any other penalty which the tribunal may deem appropriate. For example, the Tribunal or the Committee may feel that a sanction is appropriate, but that it should be combined with a fine to reflect properly the seriousness with which it views the conduct.

This is not applicable to students or registered graduates.

Factors which should be considered in order to determine whether a fine is an appropriate sanction, may 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;
- g) Cost of the auditing certificates he ought to have held throughout the period.

It should be noted that this list is not exhaustive.

Once the Tribunal or the Committee has decided the appropriate amount of a fine, it may be reduced after considering the member's financial situation or the issue of costs. It may not be increased if the member appears to be able to afford more.

5.9 Suspension of rights and privileges for a period not exceeding 2 years

The Tribunal or the Committee has the power to suspend the rights and privileges of a member of the Institute for a period not exceeding 2 years. Circumstances in which the Tribunal or the Committee may wish to consider making such an order include where the Tribunal or the Committee feels that the member has not accepted responsibility for the misconduct and/or does not have insight into why it was serious or there are continuous breaches by the member of the accounting or auditing principles or practices or the ICATT Rules and Regulations 2018 and the member has failed to take necessary steps to remedy those breaches. The period of suspension of 2 years is intended to reflect the Tribunal's or the Committee's view of the length of time the member needs to reflect upon his conduct before being permitted to enjoy the rights and privileges.

5.10 Withdraw, suspend or attach conditions to the member's or firm's practicing certificate

The Tribunal or the Committee should consider whether for the protection of the public it should make an order to withdraw, suspend or attach conditions to the member's or firm's practicing certificate.

An order to withdraw, suspend or attach conditions to the member's or firm's practicing certificate should be effective on the date of the Order unless an appeal is filed. When an appeal is filed and the Committee affirms the decision to withdraw, suspend or attach conditions to the member's or firm's practicing certificate, the order will be of immediate effect.

Moreover, 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. For example, a member may be prohibited from holding client monies as a condition of holding a practising certificate. Any conditions should be:

- a) appropriate;
- b) proportionate;
- c) workable; and
- d) measurable.

The principle of proportionality requires that any conditions imposed should be the minimum necessary to protect the public.

Relevant factors to take into consideration (this list is not exhaustive):

- a) identifiable area of practice in need of review/retraining

- b) evidence of potential and willingness to respond positively to future training
- c) clients not at risk as a result of continued registration with conditions;
- d) conditions will protect clients during the period they are in force.

5.11 Revocation of membership (Members & Firms)/Removal from the Graduate or Student Register (not applicable to students or registered graduates)

The revocation of membership or the removal of a registered graduate or a student from the Register are appropriate where these are the only means of protecting the public and/or the conduct is so serious as to undermine confidence in the accountancy profession if the member, firm, registered graduate or student were to remain on the registered.

Relevant factors to take into consideration (this list is not exhaustive):

- a) serious departure from relevant professional standards;
- b) abuse of position/trust;
- c) dishonesty;
- d) persistent lack of understanding and appreciation of seriousness of actions or consequences;
- e) conduct continued over a period of time;
- f) affected or had the potential to affect a substantial number of clients/ members of the public;
- g) attempted to cover up the misconduct;
- h) persistent denial misconduct;
- i) breach of regulatory order;
- j) prior disciplinary record; and
- k) collusion to cover up conduct.

5.12 Disqualification from obtaining a certificate for a specified period or until the occurrence of a specified event.

In addition to the power to revoke a member's or firm's membership or to remove a graduate or student from the Register, the Tribunal and the Committee has the power combine that order with an order that no application for readmission may be considered until a minimum period (of no more than five years) has expired or until the requisite events have taken place. (Note that this does not mean that the member, firm, graduate or student is automatically readmitted after the expiry of the period, as it is not a suspension. The decision as to whether a disciplined member, firm, graduate or student is suitable to be readmitted is within the sole discretion of the Licensing Committee.)

Where the Tribunal or the Committee has not ordered revocation or removal but has concerns as to the member's fitness and propriety to hold a current certificate or his eligibility to conduct regulated activities, or a graduate or student's ability to remain on the Register, it may order that the issue is referred to the Admissions and Licensing Committee by a date within the next 12 months.

Circumstances in which the Tribunal or the Committee may wish to consider making such an order include where the Tribunal or the Committee feels that the member, firm, graduate or student has not accepted responsibility for the misconduct and/or does not have insight into why it was serious. The period of exclusion should reflect the Tribunal's or the Committee's view of the length of time the member/student needs to reflect upon his conduct before being permitted to apply for readmission.

Note that the Tribunal or the Committee does not have the power to impose any additional conditions upon readmission.

5.13 Specified period not to be reckoned as part of approved accountancy experience

In order to become a member, a certain number of years of approved accountancy experience must be obtained. The Tribunal or the Committee has the power to order that any part of the registered graduate's or student's experience gained should not count towards such approved accountancy experience.

5.14 Ineligible to sit examinations for a specified period or Disqualification from one or more examinations

The Tribunal or 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.

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

5.15 Costs

An order for costs is not a sanction, but it is mentioned here for completeness as it is an order which the Committee may make.

5.16 Publication of the proceedings, including the identity of the relevant member

Publicity is only applicable where the Committee has made a decision and the:

- a) The successful appellant or relevant firm so requests; or
- b) Where such findings and orders can provide guidance or directions, promulgate best practice or clarify issues of uncertainty which may be of benefit to the members or the public as a whole.

Publicity is not a sanction, but it is mentioned here for completeness. The normal order for publicity is that the findings and orders be published on the Institute's website and in the local press referring to the member by name. However, the Committee has complete discretion to decide where the press release should be issued.

The Committee also has a discretion to order that publicity should not refer to the member by name, but this discretion may only be exercised in exceptional circumstances. Exceptional circumstances may exist where:

- a) publication of the name would lead to an unusual adverse impact upon the member or a third party, over and above the adverse impacts which flow naturally because of named publication of disciplinary action (for example, an unusual impact upon a person's health or safety) and the nature of the unusual adverse impact is such that the private interests of the member or third party in the name being withheld outweigh the public interest in publication of the name; or
- a) there is some other compelling reason why the member's name should be withheld, which outweighs the public interest in publication of the name.

6: GUIDELINE SANCTIONS

The guidelines set out on the pages to follow relate to the most common types of conduct that are brought before the Committee.

The guideline sanction is **guidance only** and is not intended to be treated as a tariff. Each case will be judged on its own facts.

In assessing the appropriate sanction, the Tribunal or the Committee must consider any aggravating or mitigating factors relevant to the conduct in question. **The guideline sanction may be departed from where there are aggravating factors which would increase it or mitigating factors which would decrease it.** The Tribunal or the Committee is free to attach such weight as it thinks fit in its absolute discretion to any aggravating or mitigating factors. **The aggravating and mitigating factors listed are examples only and are not exhaustive.**

When the Committee has assessed the appropriate sanction, it will then consider any personal mitigation advanced by the member/student.

Before reaching a decision, the Tribunal or the Committee will consider whether the sanction it has arrived at is the minimum necessary to achieve the purpose, and whether personal mitigation has been taken into account, in accordance with the principle of proportionality outlined in Section 4 of this guideline

AUDIT

<ul style="list-style-type: none">• Acting as an auditor when ineligible.• Responsible individual signs audit report without conducting audit.• Repeated seriously defective work	<ul style="list-style-type: none">• Audit work of a seriously defective standard (eg breaches of Statements of Auditing Standards).• Lesser forms of poor audit work
GUIDELINE: SUSPENSION OR REVOCATION	GUIDELINE: SEVERE REPRIMAND
<p>The Tribunal or Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.</p>	
<p>The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline</p>	
Aggravating factors	Mitigating factors
<ul style="list-style-type: none">• Whether any loss to clients or third parties• Consequences of incorrect/poor audit work• Number of accounts audited and the period of time involved	<ul style="list-style-type: none">• Inadvertent/minor breach of the Regulations• Steps taken to correct matters• Subsequent audit work satisfactory
<p>The aggravating and mitigating factors listed are examples only and are not exhaustive. If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.</p>	
<p>Any personal mitigation will be considered (including any character references).</p>	

INSOLVENCY

<ul style="list-style-type: none"> Acting as an Insolvency Practitioner without a licence Repeated seriously defective work by a member practitioner 	<ul style="list-style-type: none"> Repeated seriously defective work by a non-member 	<ul style="list-style-type: none"> Failure to comply with the Insolvency Act, rules and regulations and/or best practice/ ethical guidance
GUIDELINE: REVOCATION/FINE	GUIDELINE: SUSPENSION OF LICENCE	GUIDELINE: SEVERE REPRIMAND

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.

Aggravating factors	Mitigating Factors
<ul style="list-style-type: none"> Persistent course of conduct Evidence that creditors have been prejudiced Poor record keeping eg minutes of creditors meetings Period of time failings covered Any personal benefit to the Practitioner 	<ul style="list-style-type: none"> Prompt completion of outstanding work

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

MISUSE OF CLIENT MONIES

**(this includes other monies held on trust for clients and/or third parties such as insolvency estate monies and investment business monies)*

<ul style="list-style-type: none"> • Drawing remuneration from client monies without prior authorization. • Failure to properly/adequately account for client monies. • Failing to repay client monies in accordance with terms of agreement. • Client monies not held in designated client account • Paying a personal or business expense from client account 	<ul style="list-style-type: none"> • Paying monies other than client monies into client account • Failure to account for interest on client monies. • Failing to maintain accurate records and controls of client monies received.
GUIDELINE: REVOCATION OR SUSPENSION	GUIDELINE: SEVERE REPRIMAND

The Committee may also consider other sanctions available to it. See Sections 3, 4 and 5 in this guideline for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> • Large number of clients involved. • Repeated breaches. • Loss to clients and/or third parties • Account overdrawn. 	<ul style="list-style-type: none"> • No benefit to the practitioner resulting from breach. • Matters promptly rectified when brought to member's attention. • Breach occurred once. • Sums held for a short period of time. • No loss to third parties or clients. • Clients compensated for any loss. • Procedures introduced to prevent recurrence.

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account, including any character references.

STUDENT ISSUE

(This section applies to issues which can only apply to issues which can only relate to students)

Misconduct relating to examinations: <ul style="list-style-type: none">• Impersonation of another ICATT student• Obtaining improper assistance from another.• Plagiarism• Unauthorised possession of materials by a student with the intention to cheat.• Student holding out as an ICATT member	<ul style="list-style-type: none">• Failing to comply with instructions from invigilator.• Unauthorised possession of materials by a student with NO intention to cheat.
GUIDELINE: REMOVAL FROM REGISTER OR DISQUALIFICATION TO SIT FUTURE EXAMINATIONS	GUIDELINE: SEVERE REPRIMAND
<p>The Committee may also consider other sanctions available to it. See Sections 3, 4 and 5 in this guideline for further information.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.</p>	
<p>THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.</p>	
Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none">• Failure to rectify conduct where rectification is possible.	<ul style="list-style-type: none">• Rectified conduct immediately where rectification is possible
<p>The aggravating and mitigating factors listed are examples only and are not exhaustive.</p>	
<p>If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.</p>	
<p>Any personal mitigation will be taken into account, including any character references.</p>	

CRIMINAL CONVICTIONS

<ul style="list-style-type: none">• Dishonesty Offences• Serious assault

GUIDELINE: SUSPENSION OR REVOCATION OR REMOVAL FROM REGISTER

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3, 4 and 5 in this guideline for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none">• Nature and circumstances of offence• Sentence imposed by Court	<ul style="list-style-type: none">• Nature and circumstances of the offence.• No issue of integrity arises.• Sentence imposed by the Court

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account, including any character references.

PRACTISING CERTIFICATE ISSUES

- Engaging in public practice without holding a valid practicing licence.
- Being a director, partner or sole proprietor in firm engaged in public practice without holding a practicing certificate.
- Falsely described/misrepresented the firm as Chartered Accountants
- Failing to hold (or hold adequate) PII
- Students carrying on public practice

GUIDELINE: FINE OF SUSPENSION OR REVOCATION OF MEMBERSHIP

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3, 4 and 5 in this guideline for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none">• Extensive practice over a significant period of time.• Continued conduct after becoming aware of breach• Willful failure	<ul style="list-style-type: none">• Minimal public practice work carried out.• Short period of time.• Rectified the conduct immediately.

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account, including any character references.

PROFESSIONAL COMPETENCE AND DUE CARE

- Defective accountancy work (eg. poor quality, late filing, not in statutory format, not complying with rules/requirements of client's regulator)
- Poor advice/delay in advising in relation to client's affairs/neglect of client's affairs
- Failing to exercise adequate control and supervision over a practice
- Failing to respond expeditiously or adequately or at all to professional correspondence

GUIDELINE: SEVERE REPRIMAND OR FINE OR TRAINING

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3, 4 and 5 in this guideline for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none">• Nature of inefficient or incompetent work• Attempt to cover up errors• Financial Loss to client or third party• Period of time and nature of sets of accounts• Deliberate or reckless• Size of loss or errors involved• Client unhelpful in providing accounts or gave insufficient or misleading information• 	<ul style="list-style-type: none">• No loss• Client promptly recompensed for any loss• Had taken/obtained professional advice• Client helpful in providing accounts or was forthcoming in information• Evidence of lack of co-operation by client.

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account, including any character references.

INVESTMENT BUSINESS

Carrying on investment business without authorisation
Carrying on investment business outside the firm's authorisation category
Seriously negligent/reckless investment advice
Breach of investment business regulations

GUIDELINE: SUSPENSION OR REVOCATION OF MEMBERSHIP

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3, 4 and 5 in this guideline for further information.

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THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none">• Significant number of clients/number of transactions conducted.• Failure to make clients aware of the risks.• Lack of documentation on advice• High value commission earned.• Breach is a criminal offence	<ul style="list-style-type: none">• Improved procedure immediately• Steps taken on behalf of client to recover loss• Level of seriousness of breach

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account, including any character references.

CONDUCT AS A COMPANY DIRECTOR

Disqualification as a company's director				
GUIDELINE: TRAINING OR SUSPENSION OR SERIOUS REPRIMAND				
The Committee may also consider other sanctions available to it. See Sections 3, 4 and 5 in this guideline for further information.				
The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.				
THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.				
<table border="1"><thead><tr><th>Aggravating Factors</th><th>Mitigating Factors</th></tr></thead><tbody><tr><td>• Length of disqualification</td><td>• Length of disqualification</td></tr></tbody></table>	Aggravating Factors	Mitigating Factors	• Length of disqualification	• Length of disqualification
Aggravating Factors	Mitigating Factors			
• Length of disqualification	• Length of disqualification			
The aggravating and mitigating factors listed are examples only and are not exhaustive.				
If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.				
Any personal mitigation will be taken into account, including any character references.				

OTHER LIABILITIES AND BREACHES OF RULES OR REGULATIONS

<ul style="list-style-type: none"> Failure to comply with Licensing Committee order or an undertaking given to ICATT. Failure to co-operate with a disciplinary investigation. Failure to co-operate with ICATT'S monitoring process Bankruptcy 	<ul style="list-style-type: none"> Being subject to an insolvency process other than bankruptcy Failure to satisfy judgment debt without reasonable excuse within 2 months Failure to inform ICATT of relevant matters indicating that member himself may be liable to disciplinary action (eg. Non-disclosure of criminal conviction). Failure to comply with CPD requirements. Failing to provide professional clearance or transfer information.
GUIDELINE: SUSPENSION	GUIDELINE: SEVERE REPRIMAND OR FINE
<p>The Committee may also consider other sanctions available to it. See Sections 3, 4 and 5 in this guideline for further information.</p> <p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.</p> <p>THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.</p>	
<p>Aggravating Factors</p> <ul style="list-style-type: none"> Duration of breach (s) Deliberate/reckless disregard if order or regulations 	<p>Mitigating Factors</p> <ul style="list-style-type: none"> Steps swiftly taken to rectify breach
<p>The aggravating and mitigating factors listed are examples only and are not exhaustive.</p> <p>If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.</p> <p>Any personal mitigation will be taken into account, including any character references.</p>	

SANCTION IMPOSED BY ANOTHER PROFESSIONAL BODY

GUIDELINE:

The Tribunal or the Committee should consider the sanction imposed by the other body, but they are not constrained to follow it. The Tribunal or the Committee may impose a greater or lesser sanction than that imposed by the other body.

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3, 4 and 5 in this guideline for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE.

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none">• The nature and type of sanction imposed• The amounts of times, sanctions were imposed taken by the other body.	<ul style="list-style-type: none">• Compliance with sanctions imposed

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account, including any character references.

ETHICAL CONDUCT

<ul style="list-style-type: none"> • Deceiving or misleading ICATT • Failing to act with integrity • Lack of objectivity/confidence • Conflict of interest • Breach of confidentiality 	<ul style="list-style-type: none"> • Unprofessional behavior (lack of courtesy and consideration.)
GUIDELINE: SUSPENSION OR SEVERE REPRIMAND	GUIDELINE: SEVERE REPRIMAND OR TRAINING OR FINE
<p>The Committee may also consider other sanctions available to it. See Sections 3, 4 and 5 in this guideline for further information.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.</p>	
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<p>Aggravating Factors</p> <ul style="list-style-type: none"> • Deliberate/reckless • Position of trust held • Size of loss • Nature and size of error involved. 	<p>Mitigating Factors</p> <ul style="list-style-type: none"> • Information provided carelessly/accidentally
<p>The aggravating and mitigating factors listed are examples only and are not exhaustive.</p>	
<p>If there is a previous disciplinary history, its relevance should be considered. It may be an aggravating factor.</p>	
<p>Any personal mitigation will be taken into account, including any character references.</p>	