Financial Reporting Council

March 2021

# Accountancy Scheme

## Sanctions Guidance

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## Contents

*Page*

**Introduction** .......... Error! Bookmark not defined.

**Aims and objectives of Disciplinary Scheme** .......... 2

**Determination of Sanction** .......... 3

*Members* .......... 3

*Member firms* .......... 4

**Combiation of Sanctions** .......... 4

**Summary of Approach to Determining Sanctions** .......... 5

*Undertaking the initiaion assessment of the potential sanctions to impose* .......... 5

*Reprimands and Severe Reprimands* .......... 7

*Direction* .......... 8

*Fines…* .......... 9

*Waiver or repayment of client fees* .......... 11

*Preclusion* .......... 11

*Exclusion* .......... 13

**Other factors to be taken into account when determining Sanctions** .......... 13

*Intent…* .......... 13

*Recklessness* .......... 14

*Aggravating & Mitigating Factors* .......... 14

*Cooperation* .......... 16

*Adjustment for deterrence* .......... 17

*Discount for Admissions and/or Settlement* .......... 17

**Costs…** .......... 19

**Effective Date** .......... 19

## Introduction

1. This document provides guidance for members of the Financial Reporting Council (the "FRC") Disciplinary and Appeal Tribunals (the "Tribunal" or "Tribunals") when considering the imposition of sanctions under paragraphs 9(8)(i) and 10(12)(i) of the Accountancy Scheme (the "Scheme") and Accountancy Regulations (the "Regulations") on Members and Member Firms as defined in the Scheme[1].

2. Although expressed as guidance for members of Tribunals, this guidance will also be relevant to Executive Counsel and to any member of the Tribunal Panel appointed to consider a Proposed Settlement Agreement when discharging their respective responsibilities under the Scheme.

3. Terms defined in the Scheme shall have the same meaning in this guidance.

4. This guidance is made by the FRC Board, pursuant to paragraph 3(ii) of the Scheme which:

   a. empowers the Board to provide any Tribunal with guidance concerning the exercise of its duties under the Scheme; and

   b. requires any Tribunal to have regard to any such guidance.

5. This document is intended to provide guidance to Tribunal members on the approach to be taken when considering whether and, if so, what sanctions are appropriate in any given case. It is intended to:

   a. promote proportionality, clarity, consistency and transparency in decision-making; and

   b. ensure that all parties are aware from the outset of the approach likely to be taken by a Tribunal when determining what sanction to impose.

   It is important to emphasise that this guidance is advisory – and is not binding on Tribunals. It is for each Tribunal to decide what, if any, sanction to impose given the findings it makes in the case that it has heard. Where a Tribunal decides to depart from the guidance, it should explain its reasons for the departure.

6. This guidance is subject to the provisions of the Scheme. In the event of any conflict between the two, the provisions of the Scheme (and any Regulations thereunder) shall prevail. The procedure governing the Tribunal's consideration of the appropriate sanction is set out in Regulation 34. Nothing in the guidance is intended to be inconsistent with that provision and Tribunals must proceed in accordance with the overriding requirements of fairness and natural justice.

7. This guidance is a public document. Periodically, it will be reviewed and (where appropriate) revised in the light of experience. The guidance cannot deal with every single

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[1] This document was first issued in January 2021 following updates to the Accountancy Scheme also issued on 1 January 2021. The documents have since been re-issued on 30 March 2021 with reinstated numbering and cross references from their previous versions for continuity and ease of use.

situation and exceptions will sometimes arise. The guidance should be considered alongside any principles emerging from cases decided by previous Tribunals under the Scheme. Tribunals may have regard to sanctions imposed in other cases. They must however, determine the sanction which they think appropriate on the facts and circumstances of the case before them and should not feel constrained by the sanctions imposed (or not imposed) in earlier cases to impose a sanction which they do not think appropriate.

## Aims and Objectives of the FRC's Disciplinary Scheme

8. Sanctions are imposed under the Scheme where there is a finding by a Tribunal that a Member or Member Firm has committed an act of Misconduct, or has failed to comply with any of his or its obligations under paragraphs 14(1) or 14(2) of the Scheme. Misconduct is defined in the Scheme as:

   *an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its professional activities (including as a partner, member, director, consultant, agent or employee in or of any organisation or as an individual) or otherwise, which falls significantly short of the standards reasonably to be expected of a Member or Member Firm or has brought, or is likely to bring, discredit to the Member or the Member Firm or to the accountancy profession.*

9. In determining the appropriate sanction, a Tribunal should have regard to the reasons for imposing sanctions for Misconduct in the context of professional discipline. Sanctions are imposed to achieve a number of objectives, namely:

   a. to declare and uphold proper standards of conduct amongst Members and Member Firms and to maintain and enhance the quality and reliability of accountancy work;

   b. to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting and in the regulation of the accountancy profession;

   c. to protect the public from Members and Member Firms whose conduct has fallen significantly short of the standards reasonably to be expected of that Member or Member Firm; and

   d. to deter members of the accountancy profession from committing Misconduct.

The primary purpose of imposing sanctions for acts of Misconduct is not to punish, but to protect the public and the wider public interest.

10. This guidance has been developed to help Tribunals achieve these objectives by imposing sanctions which:

    a. improve the behaviour of the Member or Member Firm concerned;

    b. are tailored to the facts of the particular case and take into account the nature of the Misconduct and the circumstances of the Member or Member Firm concerned;

    c. are proportionate to the nature of the Misconduct and the harm or potential harm caused;

    d. eliminate any financial gain or benefit derived as a result of the Misconduct; and

    e. deter Misconduct by the Member, Member Firm or others.

11. In connection with 10(a) above, Tribunals should consider whether, and, if so, to what extent, the sanctions proposed would be likely to lead to improvements in respect of the matters which give rise to the proceedings and in the quality of work of the Member or Member Firm concerned.

12. Tribunals should also consider whether the sanction or combination of sanctions, financial and/or non-financial, achieve the objectives of the Scheme. There may be circumstances where the objectives can be achieved without a Fine.

## Determination of Sanction

13. A Tribunal should consider the full circumstances of each case and the seriousness of the Misconduct involved before determining which sanction or combination of sanctions to impose on the Member or Member Firm. This guidance considers those factors that may be relevant to a Tribunal's consideration. The factors are not listed in any kind of hierarchy and it is for a Tribunal 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.

14. In deciding which sanction or combination of sanctions to impose, a Tribunal should have regard to the principle of proportionality. In assessing proportionality, a Tribunal should consider whether a particular sanction is commensurate with the circumstances of the case, including the seriousness of the Misconduct found and the circumstances of the Member or Member Firm concerned.

15. The seriousness of the Misconduct 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 or Member Firm in committing the Misconduct and the actual or potential loss or harm caused by the Misconduct. The extent to which intent, recklessness, knowledge of the risks or likely consequences, negligence or incompetence are involved will vary.

16. The sanctions available to Tribunals are set out at Appendix 1 to the Scheme and are reproduced below for convenience:

*Members*

a. Reprimand

b. Severe Reprimand

c. Condition – The Tribunal may order a Member to comply with any direction that it considers, in its absolute discretion, appropriate. By way of example and without limitation to the Tribunal's general discretion, such direction may require a Member to undertake education or training, to comply with particular requirements when practising (including restrictions on the nature of any work undertaken or clients represented)

d. Exclusion as a Member of one or more Participants and that the exclusion be for a recommended period of time.

e. Fine – amount specified by the Tribunal (and in the event of a non-payment in full, including any interest, of a Fine and/or cost order within the time specified for payment exclusion as a Member of one or more Participants)

f. Waiver/repayment of client fees

g. Order that a Member be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence (for the practice of an activity requiring such a certificate, registration, authorisation or licence)

h. Order that a Member's practising certificate or registration or authorisation or licence be withdrawn (for the practice of any activity requiring such a certificate, registration, authorisation or licence). The Tribunal may recommend that such a certificate, registration, authorisation or licence not be reinstated for a specified period of time.

*Member Firms*

a. Reprimand

b. Severe Reprimand

c. Condition – The Tribunal may order a Member Firm to comply with any direction that it considers, in its absolute discretion, appropriate. By way of example and without limitation to the Tribunal's general discretion, such direction may require a Member Firm to implement education or training programmes, or to implement organisational or administrative requirements (including restrictions on the nature of any work undertaken or clients represented)

d. Fine – amount specified by the Tribunal (and in the event of a non-payment in full, including any interest, of a Fine and/or cost order within the time specified for payment the failure shall have the same consequences for each Member who was a sole practitioner in, a partner in, a member (of a limited liability partnership) of, or a director of the firm at the relevant time as it would if the fine or costs had been imposed on him individually)

e. Waiver/repayment of client fees

f. Order that a Member Firm be ineligible for a prescribed period for registration or authorisation or a licence (for the practice of an activity requiring such registration, authorisation or licence)

g. Order that a Member Firm's registration or authorisation or licence be withdrawn (for the practice of any activity requiring such registration, authorisation or licence). The Tribunal may recommend that such registration, authorisation or licence not be reinstated for a specified period of time.

## Combination of Sanctions

17. Sanctions may be imposed in combination. When doing so, Tribunals should assess, in the light of all the circumstances of the matter, the appropriateness of the proposed sanctions both individually and in combination. Set out below are some of the considerations that a Tribunal should have regard to when imposing sanctions in combination:

    a. a Reprimand or Severe Reprimand can be ordered in conjunction with any other sanction(s). Ordinarily, if the seriousness of the Misconduct is such as to merit a Severe Reprimand, it will be appropriate for it to be ordered in conjunction with another sanction;

    b. a Fine can be ordered in conjunction with any other sanction(s);

c. a sanction requiring the Waiver or Repayment of client fees is unlikely to be appropriate if it is the only sanction imposed by a Tribunal because such a sanction (on its own) is unlikely to be sufficient to reflect the nature and seriousness of the Misconduct and achieve the purpose of imposing sanctions (see paragraph 9 above);

d. dependent upon the circumstances of the particular Member or Member Firm, it may be appropriate to order a specific period of ineligibility for registration or authorisation or a licence or, alternatively, to order that a Member or Member Firm's registration or authorisation or licence be withdrawn in conjunction with another sanction (other than exclusion);

e. Exclusion is only available as a sanction in relation to a Member. It can be imposed in a number of different combinations, together with a Fine, a Waiver or Repayment of client fees and/or a Severe Reprimand.

## Summary of Approach to Determining Sanction

18. It follows, therefore, that the normal approach to determining the sanction to be imposed in a particular case should be to:

    a. assess the nature and seriousness of the Misconduct found by the Tribunal (paragraphs 20 to 24);

    b. identify the sanction or combination of sanctions that the Tribunal considers potentially appropriate having regard to the Misconduct identified in a. above (paragraphs 25 to 55);

    c. consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level of sanction under consideration (paragraphs 60 to 65);

    d. consider any further adjustment necessary to achieve the appropriate deterrent effect (paragraphs 66 and 67);

    e. consider whether a discount for admissions or settlement is appropriate (paragraphs 68 to 74); and

    f. decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate.

19. Tribunals should ensure that their decisions give reasons which indicate what view they have reached on the matters above and why.

## Undertaking the initial assessment of the potential sanctions to impose

20. In assessing the nature and seriousness of the Misconduct and in determining which sanctions might be appropriate, a Tribunal will normally consider the factors summarised in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. A Tribunal should also consider carefully whether there may be other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, a Tribunal should decide the relative weight to ascribe to each relevant factor.

21. Factors which may be considered include:

a. the financial benefit derived or intended to be derived from the Misconduct. This may include any loss avoided or intended to be avoided where it is practicable to quantify this (for example, this could be quantified in appropriate cases by the fees received by the Member or Member Firm, or by performance related pay, bonuses, or share options received by the Member). A Tribunal may also allocate an amount in respect of interest on the benefit obtained;

b. the gravity and the duration of the Misconduct;

c. whether the Misconduct caused or risked the loss of significant sums of money (for example, this could be quantified in appropriate cases by reference to the reduction in market value or loss to creditors);

d. where the Misconduct involved a failure to comply with professional standards, whether such failure was intentional or unintentional;

e. the nature, extent and importance of the standards breached;

f. whether the Misconduct involved a failure to act or conduct business with integrity;

g. whether the Misconduct was dishonest, deliberate or reckless (paragraphs 57 to 59);

h. whether the Member or Member Firm has been convicted of a related criminal offence in the United Kingdom;

i. whether the Member or Member Firm has been convicted outside the United Kingdom of a related offence which would have constituted a criminal offence in the United Kingdom;

j. whether the Misconduct was isolated, or repeated or ongoing;

k. if repeated or ongoing, the length of time over which the Misconduct occurred;

l. the extent to which any potential financial crime (such as fraud) was facilitated or able to occur as a result of (i) deficiencies in the governance or management of the entity affected or (ii) the Misconduct;

m. whether steps had been taken to address any similar Misconduct previously identified;

n. whether the Misconduct adversely affected, or potentially adversely affected, a significant number of people in the United Kingdom (such as the public, investors or other market users, consumers, clients, employees, pensioners or creditors);

o. whether the Member or Member Firm has failed to comply with any previous direction or other sanction relevant to this Misconduct;

p. whether it is likely that the same type of Misconduct will recur;

q. whether the Misconduct undermines the purpose or effectiveness of the disciplinary arrangements, such as a failure to comply with obligations under the Scheme or the requirements of the relevant Participant;

r. whether the Misconduct could undermine confidence in the standards of conduct in general of Members and Member Firms, and/or in financial reporting and/or corporate governance in the United Kingdom and/or in the profession generally;

s. in the case of a Member Firm, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of ISQC 1 (or its equivalent);

t. in the case of a Member Firm, when the Member Firm's senior management became aware of the Misconduct and what action was taken at that point;

u. whether the Member caused or encouraged other individuals to commit Misconduct;

v. whether the Member held a senior position and/or supervisory responsibilities; and

w. whether the Member was solely responsible for the Misconduct.

22. When considering a sanction to be imposed for a failure by a Member or a Member Firm to comply with any of his or its obligations under paragraphs 14(1) or 14(2) of the Scheme, a Tribunal considers the reason(s) for and the significance of the failure to comply. Where the non-compliance is continuing, a Tribunal considers whether to impose a Fine that would promote compliance, such as a Fine calculated on a daily or other periodic basis.

23. When determining the sanction to be imposed, a Tribunal will have due regard to the fact that sanctions have been, or may be, imposed by another regulator or other authority in respect of the Misconduct or the events related to that Misconduct to ensure that consideration is given to the need to be proportionate, where other sanctions may address the purposes set out at paragraph 9 above.

24. The following sections provide guidance on the factors that a Tribunal may take into account when considering whether to impose a particular sanction, whether individually or in combination.

## Reprimands and Severe Reprimands

*Introduction*

25. A Reprimand or Severe Reprimand signals a Tribunal's disapproval of the Member or Member Firm's conduct to that Member or Member Firm. Further, through the publication of the Tribunal's decision, that disapproval will be communicated to the wider public and profession.

26. Although it has no direct or immediate impact on the right to practice, a Reprimand or Severe Reprimand will show on that Member or Member Firm's disciplinary record. The imposition of Reprimands or Severe Reprimands also allow the FRC and/or a Participant to identify any repetition of the particular Misconduct and for the FRC, an FRC Tribunal and/or a Participant to take this into account when deciding upon appropriate action or sanction in respect of any further Misconduct.

*Ordering a Reprimand or a Severe Reprimand*

27. A Reprimand or Severe Reprimand can be given in conjunction with another sanction. The circumstances in which a Reprimand or Severe Reprimand either alone or in conjunction with a Fine may be appropriate include:

a. where the Misconduct was unintended or where the Misconduct does not cast doubt on the general competence of the Member or Member Firm; and

b. where the Misconduct is not so damaging to public and market confidence in the standards of conduct of Members or Member Firms and in the accountancy profession and the quality of corporate reporting in the United Kingdom that, in order to protect the public and the wider public interest, ineligibility for a licence, withdrawal of a licence or exclusion would be the more appropriate sanction.

28. Where the circumstances suggest a Reprimand or Severe Reprimand is the appropriate sanction, a Tribunal should consider the seriousness of the Misconduct to determine whether a Severe Reprimand is the more appropriate censure for the particular Misconduct.

## Direction

*Introduction*

29. A Tribunal may order a Member or Member Firm to comply with any direction that it considers, in its absolute discretion, appropriate. By way of example and without limitation to the Tribunal's general discretion, such direction may require a Member or Member Firm to undertake or implement education or training programmes, or to comply with particular requirements when practising (including restrictions on the nature of any work undertaken).

*Imposing a Direction*

30. This sanction is intended to be used by Tribunals where the circumstances suggest that the public interest would be best served by requiring the Member or Member Firm to take particular actions with a view to:

    a. improving the professional competence of a particular Member;

    b. ensuring that all partners or personnel in a Member Firm receive training in a particular area of practice;

    c. ensuring that a Member Firm implements organisational or administrative arrangements that would avoid a repetition of the Misconduct;

    d. preventing a Member or Member Firm from undertaking engagements that, based on the Misconduct established, that Member or Member Firm is not competent to undertake (for example by directing the Member or Member Firm not to undertake audits of entities of a particular character – for example, of a charity or a publicly listed company).

31. The imposition of a Direction will normally be accompanied by ancillary provisions that address such matters as:

    a. the date by which any Direction must be complied with;

    b. the period during which any limitation on a Member or Member Firm's ability to undertake particular engagements shall remain in effect;

    c. any conditions or requirements that must be complied with before any Direction will be discharged;

    d. the identity of any person or organisation responsible for overseeing compliance with a Direction;

e. the procedure by which any Member or Member Firm may apply to vary or discharge a Direction.

## Fines

*Introduction*

32. A Fine may be ordered either alone or in combination with one or more other sanctions.

Given that it will normally be in the public interest for any Misconduct warranting the imposition of a Fine to be accompanied by some degree of censure (e.g. through a Reprimand or Severe Reprimand), a Tribunal should not impose a Fine in isolation (i.e. without any other sanction) without satisfying itself that that is the appropriate course and providing reasons for that decision.

*Ordering a Fine*

33. In order to determine whether a Fine is appropriate the factors to be considered will normally include whether:

    a. deterrence can be achieved by issuing a Reprimand or a Severe Reprimand alone;

    b. the Member or Member Firm has derived any financial gain or benefit (including avoidance of loss) as a result of the Misconduct;

    c. the Misconduct involved or caused or put at risk the loss of significant sums of money; and

    d. a Fine was ordered in similar previous cases.

*Determining the amount of a Fine*

34. In cases where a Tribunal considers that a Fine is appropriate, it should aim to impose a Fine that:

    a. is proportionate to the Misconduct and all the circumstances of the case;

    b. will act as an effective deterrent to future Misconduct; and

    c. will promote public confidence in the regulation of the accountancy profession and in the way in which Misconduct is addressed.

35. In undertaking this assessment, a Tribunal will normally take into consideration:

    a. the seriousness of the Misconduct;

    b. in the case of a Member Firm, its size/financial resources and the effect of a Fine on its business;

    c. in the case of a Member, his financial resources and the effect of a Fine on that Member and his future employment;

    d. the factors set out in paragraph 21.

There is no upper limit on the Fine that the Tribunal can impose.

36. In the majority of cases involving the imposition of a Fine on a Member Firm, the amount of revenue generated by the firm or the business unit(s) involved in the Misconduct will be a factor to be taken into account when assessing the size of Fine which would be necessary, in the circumstances of the particular case, to act as a credible deterrent.

37. Where revenue is not an appropriate indicator of financial means, a Tribunal should seek an appropriate alternative measure. Other indicators of financial means include the level of profitability per partner, market share, the number of audit and non-audit clients and the respective size of those clients, the number of principals,[2] partners and registered individuals.

38. Having assessed the seriousness of the Misconduct involved, the amount of any Fine will have regard to the Member's financial resources (including his income and assets) and employment prospects.

39. A Member's remuneration is likely to be an appropriate starting point when considering the level of Fine that would (i) be appropriate to reflect the Misconduct involved and (ii) be necessary to act as a credible deterrent.

40. The calculation of a Member's financial resources should take account of his annual gross income together with any benefits he derives from his current employment, including any bonus, pension contribution, share options and share schemes, and/or distributions of profit. Employment includes both employment and self-employment as an adviser, employee, director, partner or contractor or in any other capacity.

41. Where the Member concerned is no longer in employment, for example because he has left the Member Firm, a Tribunal will need to obtain information about the Member's existing financial resources and future employment prospects.

*Other considerations*

42. When deciding the level of Fine to impose, a Tribunal should:

    a. when considering a Member or Member Firm's financial resources, establish whether there are any arrangements that would result in part or all of any Fine being paid or indemnified by insurers, or by a Member's firm, partnership, company or employer.

       The existence of any such arrangements should not be a ground for increasing any Fine beyond the level that would otherwise be considered appropriate by the Tribunal; and

    b. disregard the possibility that the Member or Member Firm may be liable for the costs of the case. (The approach to any award of costs is considered in paragraph 75).

43. Having arrived at a figure for the Fine based on the nature and seriousness of the Misconduct, a Tribunal considers whether the amount of the Fine should be adjusted:

    a. to take account of any aggravating and mitigating factors (paragraphs 61 and 62);

[2] A principal is a partner in an LLP

b. to ensure the Fine has the necessary deterrent effect (paragraph 66 and 67); and/or

c. to reflect any discount for admissions and/or settlement (paragraph 68 to 74).

**Waiver/repayment of client fees**

*Introduction*

44. If the Member or Member Firm has gained financially from the Misconduct, in particular as a result of receipt of client fees, a Tribunal considers ordering a waiver or repayment of the relevant client fees. Any such order will normally be in addition to another sanction or sanctions.

45. The circumstances in which a waiver or repayment of client fees may be appropriate include where the Member or Member Firm has acted dishonestly, recklessly, or incompetently and there is no evidence to suggest that the client was complicit in the Misconduct or otherwise culpable for the Misconduct at the time it was committed.

*Ordering waiver/repayment of client fees*

46. In order to determine whether waiver/repayment of client fees is appropriate the factors o be considered include:

    a. whether the Misconduct has caused the client to suffer loss, or has put at risk the loss of money by the client, through no fault of its own;

    b. whether the client has obtained value for the services contracted and/or paid for from the Member or Member Firm;

    c. whether the Member or Member Firm has voluntarily repaid fees to the client concerned.

**Preclusion**

**Order that a Member or Member Firm be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence.**

**Order that a Member or Member Firm's practising certificate or registration or authorisation or licence be withdrawn and a recommendation that it not be reinstated for a specified period of time.**

*Introduction*

47. These two sanctions are considered together. However, the first is only likely to be relevant where the Member or Member Firm does not currently hold a practising certificate or any registration or authorisation or licence for the practice of any activity requiring such a certificate, registration, authorisation or licence. The second will be relevant where a Member or Member Firm does hold such a certificate, registration or authorisation or licence.

48. A Tribunal's ability to preclude a Member or Member Firm from practising in general, or from practising a particular activity for a prescribed period, may be the appropriate sanction where the Member or Member Firm's Misconduct has been so damaging that Preclusion

should be imposed in order to protect members of the public and maintain public and market confidence in the standards of conduct of Members or Member Firms and in the accountancy profession and the quality of corporate reporting in the United Kingdom. In the case of a Member, a period of preclusion will only be appropriate if the Misconduct that occurred falls short of being fundamentally incompatible with continued membership of a Participant.

49. In the case of a Member Firm, the Tribunal should satisfy itself that no other sanction or combination of sanctions available to it pursuant to Appendix 1 of the Scheme is sufficient given the nature and seriousness of the Misconduct. The Tribunal should take into account that Preclusion will normally have an effect upon other persons in that Member Firm.

*Ordering Preclusion*

50. In order to determine whether Preclusion is appropriate, the factors to be considered include:

    a. the extent to which the Misconduct calls into question the competence of the Member or Member Firm;

    b. whether the Misconduct was dishonest;

    c. whether the Misconduct was deliberate;

    d. whether the Misconduct was reckless;

    e. the significance of the Misconduct, including the nature and importance of the standards breached;

    f. the duration and frequency of the Misconduct;

    g. the amount of financial benefit (including avoidance of loss) to the Member or Member Firm as a result of the Misconduct;

    h. whether the Misconduct adversely affected a significant number of people in the United Kingdom (such as investors, customers, employees, pensioners or creditors);

    i. whether the Misconduct involved or caused or put at risk the loss of significant sums of money;

    j. whether the Misconduct could undermine confidence in the standards of conduct in general of Members and Member Firms, and/or in financial reporting and/or corporate governance in the United Kingdom;

    k. in the case of a Member Firm, whether the Misconduct reveals serious or systemic weaknesses in the management systems or internal controls of the Member Firm;

    l. whether it is likely that the same type of Misconduct (whether on the part of the Member or Member Firm) will recur if Preclusion is not imposed;

    m. whether the Member or Member Firm concerned has failed to comply with any requirements or rulings of another regulatory or disciplinary authority relating to his/its conduct, for example those of a Participant;

n. whether the FRC (or any other disciplinary body) has taken any previous disciplinary action resulting in adverse findings against the Member or Member Firm;

o. whether 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.

### Exclusion

**In the case of a Member only, exclusion as a Member of one or more Participants and that the exclusion be for a recommended period of time**

*Introduction*

51. The ability to exclude a Member from membership with one or more Participants exists because certain Misconduct is so damaging to the wider public and market confidence in the standards of conduct of Members and in the accountancy profession and the quality of corporate reporting in the United Kingdom that removal of the Member's professional status is the appropriate outcome in order to protect the public or otherwise safeguard the public interest.

52. Prior to imposing an order excluding a Member from membership of a Participant, 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.

*Ordering Exclusion*

53. Where the Misconduct is fundamentally incompatible with continued membership of a Participant, exclusion is likely to be the appropriate sanction.

54. The factors set out in paragraph 50 will normally be relevant considerations when a Tribunal is considering whether to order Exclusion. In addition, a Tribunal will wish to consider whether any of the circumstances set out below are present:

    a. whether, if dishonest, the Misconduct was covered up and/or concealed;

    b. whether the Member has been convicted of a related criminal offence in the United Kingdom; or

    c. whether the Member has been convicted outside the United Kingdom of a related offence which would have constituted a criminal offence in the United Kingdom.

55. Where a Member has been found to have been dishonest the recommendation should normally be that he be excluded from membership of a Participant for at least 10 years.

### Other factors to be taken into account when determining the sanction to be imposed

56. In the course of this guidance reference has been made to various factors that Tribunals should consider when determining the level of sanction to impose. The characteristics of those factors are discussed below.

***Intent***

57. Whether a Tribunal concludes that the Misconduct was intentional will be a material factor when determining any sanction to be imposed.
58. Factors tending to show that the Misconduct was intentional include where:

    a. the Member involved or the Member Firm's senior management or a responsible individual intended or foresaw that the likely or actual consequences of their actions or inaction would amount to a falling short of professional standards of conduct;

    b. the Member involved or the Member Firm's senior management or a responsible individual permitted the Misconduct to continue notwithstanding that they knew that their actions breached the relevant rules, standards or procedures or the Member Firm's management or internal control systems;

    c. the Member involved or the Member Firm's senior management or a responsible individual was influenced to commit the Misconduct by the belief that it would be difficult to detect;

    d. the Member deliberately took decisions relating to the Misconduct knowing that he was acting outside his field of competence;

    e. the Member or Member Firm intended to benefit financially from the Misconduct, either directly or indirectly; and/or

    f. the Member repeated the Misconduct notwithstanding being aware that to do so would involve breaching the relevant rules, standards, or procedures.

***Recklessness***

59. A Tribunal may conclude that a Member or Member Firm acted recklessly if the Member or the Member Firm's senior management (a) knew that a proposed course of action or inaction might involve a breach of the applicable professional standards, and (b) proceeded nevertheless.

***Aggravating and Mitigating Factors***

60. Having assessed the seriousness of the Misconduct and reached a view on the sanction that would be appropriate, a Tribunal considers whether to adjust that sanction to reflect any aggravating or mitigating factors that may exist (to the extent those factors have not already been taken into account in the Tribunal's assessment of the seriousness of the Misconduct).

61. Examples of events or behaviour that a Tribunal may conclude aggravated the Misconduct, and so should be taken into account when deciding the sanction to be imposed, include where:

    a. the Member or Member Firm failed to bring the Misconduct to the attention of the FRC (or to the attention of another appropriate regulatory, disciplinary or enforcement authority) quickly, effectively or completely;

    b. the Member or Member Firm failed to cooperate with, or hindered, the investigation of the Misconduct by the FRC, or by another regulatory, disciplinary or enforcement authority (especially if the investigation was prejudiced or delayed thereby);

c. in the case of a Member Firm, that Member Firm’s senior management were aware of the Misconduct, or that such Misconduct was likely to occur, but failed to take steps to stop or otherwise prevent the Misconduct;

d. the Member involved or the Member Firm's senior management, or a responsible individual, sought to conceal the Misconduct or reduce the risk that the Misconduct would be discovered;

e. no remedial steps have been taken since the Misconduct was identified, either on the Member’s or Member Firm’s own initiative or as directed by the FRC or another regulatory authority;

f. the Misconduct involved an abuse of a position of trust, such as where a Member owed a fiduciary duty or was responsible for public funds;

g. the Misconduct was repeated and/or occurred over an extended period of time;

h. the Misconduct was committed with a view to profit (or avoidance of loss);

i. the Member or Member Firm facilitated wrongdoing by a third party or collusion with a client;

j. the Member or Member Firm was acting without the necessary authorisations, licences or registrations;

k. the Member or Member Firm has a poor disciplinary record (for example, where an adverse finding has previously been handed down against the Member or Member by the FRC or another disciplinary or regulatory body). The more serious and/or similar the previous Misconduct or breach, the greater the aggravating factor. The fact that a sanction has previously been imposed will not automatically be regarded as a significant aggravating factor. Much will depend on the degree of similarity, the time that has elapsed since the earlier sanction was imposed, the changes that have taken place since then, and the response (or lack of it) to any previous finding or sanction imposed;

l. the FRC (or another disciplinary or regulatory body) has previously brought to the Member or Member Firm’s attention, including by way of a private advice or warning, issues similar or related to the conduct that gave rise to the finding of Misconduct in respect of which the sanction is to be imposed;

m. in the case of a Member, if that Member held a senior position and/or supervisory responsibilities.

62. Examples of events or behaviour that a Tribunal may conclude mitigate the Misconduct, and so should be taken into account when deciding the sanction to be imposed, include whether:

a. the Member or Member Firm brought the Misconduct to the attention of the FRC (or to the attention of another appropriate regulatory, disciplinary or enforcement authority) quickly, effectively and completely;[3]

b. the Member or Member Firm provided an exceptional level of cooperation during the investigation of the Misconduct by the FRC, or another appropriate regulatory, disciplinary or enforcement authority;

c. in the case of a Member Firm, that Member Firm's senior management were aware of the Misconduct or that such Misconduct was likely to occur, and took appropriate steps to try to stop or prevent the Misconduct;

d. appropriate remedial steps were taken once the Misconduct was identified, irrespective of whether such steps were taken on the Member's or Member Firm's own initiative or that of the FRC or another regulatory authority;[4]

e. the Member or Member Firm was deliberately misled by a third party;

f. the Misconduct was an isolated event that is most unlikely to be repeated;

g. neither the Member nor Member Firm stood to gain any profit or benefit from the Misconduct;

h. the Member or Member Firm was subject to duress;

i. the Member or Member Firm has a good compliance history and disciplinary record;

j. in the case of a Member, that Member held a junior position;

k. in the case of a Member, personal mitigating circumstances;

l. the Member or Member Firm has demonstrated contrition and/or apologised for the Misconduct.

***Cooperation***

63. It is a requirement that Member Firms and Members will cooperate with an investigation conducted under the Scheme. In order for cooperation to be considered as a mitigating factor at the point of determining appropriate sanction it will therefore be necessary for the Member Firm or Member to have provided an exceptional level of cooperation. Non-exhaustive examples of conduct which may constitute such cooperation include

    a. self-reporting to the FRC and/or bringing to the attention of the FRC any facts and/or matters which may constitute an allegation of Misconduct; and

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[3] Self-reporting Misconduct or breaches to the relevant regulatory, disciplinary or enforcement authorities will attract greater credit than cooperation with an investigation which has been prompted by someone or something else

[4] Examples include establishing whether the Member or Member Firm's client or others have suffered loss and voluntarily compensating them; correcting any misleading statement or impression; taking disciplinary action against staff involved, if appropriate; and taking steps to prevent similar Misconduct from arising in the future

b. volunteering information or documentation not specifically requested but which the Member Firm/Member nevertheless considers may assist the investigation.

64. Conversely, a failure to provide the level of cooperation required will be considered as an aggravating factor at the point of determining appropriate sanction. Non-exhaustive examples of such failures would include:

    a. incomplete provision of documents and information in response to Notices and requests;

    b. failure to provide adequate explanation of information provided;

    c. failure to comply with deadlines specified in Notices under the Scheme and other written requests;

    d. failure to properly prepare for interviews conducted under the Scheme (including failure to review material provided by the Executive Counsel in advance of such interviews); and

    e. failure to conduct an adequate search for documents and information.

65. It is important to recognise that the examples at paragraphs 63 and 64 are merely illustrative and that the relevant Tribunal will consider the overall level of cooperation provided during the course of the investigation and enforcement process at the point of determining sanction.

### *Adjustment for deterrence*

66. If the Tribunal considers that the sanction arrived at, after making any adjustment to reflect any aggravating and mitigating factors, is insufficient to deter the Member or Member Firm who committed the Misconduct, or other Members or Member Firms, from committing further or similar Misconduct, the Tribunal may adjust the sanction to ensure that the intended deterrent effect will be achieved.

67. Examples of the circumstances where a Tribunal may consider it appropriate to make such an adjustment include where a Tribunal considers that:

    a. the Member or Member Firm already has a disciplinary record for Misconduct of a similar nature;

    b. sanctions imposed previously in respect of similar Misconduct have failed to achieve an improvement in the relevant standards of conduct of Members or Member Firms;

    c. there is a risk of similar Misconduct in the future, whether by the Member or Member Firm, or by other Members or Member Firms, in the absence of a sufficient deterrent;

    d. the sanction is too small to meet the objective of credible deterrence.

### *Discount for Admissions and/or Settlement*

#### *Admissions*

68. Where Members or Member Firms admit some or all of the facts of a case, it is appropriate that any Fine and/or other sanction that might otherwise be imposed should be adjusted to reflect the extent, significance and timing of those admissions.

69. Where the Member or Member Firm agrees the facts and liability, but not the level of Fine or the appropriate discount, the Tribunal should allow such discount as is thought appropriate having regard to all the circumstances, and, in particular, the time when the facts and liability were agreed.

70. However, no discount should be applied to the amount of any Fine that equates to the disgorgement of any benefit gained or loss avoided, or to an order for the waiver/repayment of client fees.

*Settlement*

71. The FRC and the Member or Member Firm may negotiate a settlement agreement, including the sanction to be imposed in accordance with paragraph 8 of the Scheme. In recognition of the benefits of such settlement agreements, it is appropriate to adjust the amount of any Fine and/or other sanction that might otherwise have been imposed to reflect the stage at which a settlement agreement was reached.

72. Normally, it will be inappropriate to reduce the period during which a Member or Member Firm is to be precluded from practising to reflect a settlement because the primary purpose of such a sanction is to protect the public. Therefore, any settlement adjustment will generally apply only to any Fine to be imposed.

73. For the purpose of providing guidance on the scale of any settlement adjustment, the FRC recommends that a case should be divided into five stages and a settlement discount applied to each stage:[5]

    a. Stage (1) - the period from receipt by the Member or Member Firm of the decision to commence an investigation in accordance with paragraph 7(4) of the Scheme up to and including 28 days[6] after the delivery of the Proposed Formal Complaint in accordance with paragraph 7(10) of the Scheme – a reduction of between 20 and 35%;

    b. Stage (2) - the period from 29 days after the delivery of the Proposed Formal Complaint in accordance with paragraph 7(10) of the Scheme up to and including the delivery of the Formal Complaint in accordance with paragraph 7(11) – a reduction of between 10 and 20%;

    c. Stage (3) - the period from delivery of the Formal Complaint in accordance with paragraph 7(11) of the Scheme up to and including 29 days prior to the Hearing of the Formal Complaint – a reduction of up to 10%.

    d. Stage (4) – the period from 28 days prior to the commencement of the Hearing of the Formal Complaint up to and including the day prior to the commencement of the Hearing – a reduction of up to 5%.

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[5] For the purposes of determining the stage of settlement in this paragraph, the relevant date is that on which the Proposed Settlement Agreement has been signed by both the Executive Counsel and the respondent(s)

[6] The reference to days in this paragraph is to calendar days

e. Stage (5) – the period from the commencement of the Hearing of the Formal Complaint by the Tribunal until the final conclusion of the case, including any appeals – no reduction.

The exercise of any discount is within the discretion of the relevant decision maker.

74. Where, Executive Counsel and the Member or Member Firm attempt to agree an appropriate discount, but are unable to do so, the discount to be applied shall be determined by those responsible for authorising the settlement agreement in accordance with paragraph 8 of the Scheme.

### *Costs*

75. Having determined the sanction to be imposed, a Tribunal considers whether to make any award in respect of the costs incurred by the FRC. When doing so, a Tribunal may take account of:

a. a Member or Member Firm's financial position and the impact of any Fine that forms part of the proposed sanction; and

b. any arrangements that would result in part or all of any award of costs being paid or indemnified by insurers, or by a Member's firm, partnership, company or employer.

### Effective Date

76. This guidance was first issued by the Conduct Committee on 23 January 2013 and revised with effect from 1 June 2014,1 June 2018 and 1 January 2021. This further revised version of the January 2021 guidance has been re-issued by the Board on 30 March 2021 with numbering and cross references reinstated from earlier versions of the Accountancy Scheme for continuity and ease of use.