

GUIDELINE DISCIPLINARY SANCTIONS

To be used in ACCA's disciplinary proceedings
from 1 January 2008

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The Association of Chartered Certified Accountants

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SECTION 1: INTRODUCTION

The Guideline Disciplinary Sanctions have been developed by ACCA's Committee of Disciplinary and Regulatory Chairmen, which includes members of ACCA's Council, members of ACCA in practice, members of ACCA not in practice and the Chairmen and Deputy Chairmen of the Disciplinary and Appeal Committees.

The Guideline Disciplinary Sanctions are for use by the Disciplinary and Appeal Committees (described in this publication as "the Committee") when they are considering which sanction to impose upon an individual or firm. It is a 'living document' which will be updated and revised when the need arises.

It is important that a member, student or firm knows, prior to any decision being made, which sanctions are available to the Committee and which matters the Committee members may take into account when coming to a decision.

Each case will be judged on its own facts. Members of the Committee will exercise their own judgement in making decisions but having regard at all times to the regulatory framework set out by ACCA contained in the Rulebook and any other relevant guidance.

The Committee finds it very helpful to hear from the member, student or firm personally at a hearing, particularly if questions arise on the day. If attendance at the hearing is not possible, the Committee finds it very helpful to receive a full written explanation from the member, student or firm of the circumstances of the conduct which is the subject of the allegations, together with any mitigation relating to his personal circumstances. Documentary evidence should be submitted to support any assertions made, where possible.

SECTION 2: THE BYE-LAWS

Liability to disciplinary action arises under bye-law 8:

8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:
- (i) he or it, whether in the course of carrying out his or its professional duties or otherwise, has been guilty of misconduct;
 - (ii) in connection with his or its professional duties, he or it has performed his or its work, or conducted himself or itself, or conducted his or its practice, erroneously, inadequately, inefficiently or incompetently;
 - (iii) he or it has committed any breach of these bye-laws or of any regulations made under them in respect of which he or it is bound;
 - (iv) in the case of a relevant firm, any person has in the course of the business of that firm committed any breach of these bye-laws or of any regulations made under them in respect of which that person is bound;
 - (v) he is a specified person in relation to a relevant firm against which a disciplinary order has been made and which has become effective or which has been disciplined by another professional body or pursuant to some other disciplinary process;
 - (vi) he or it has been disciplined by another professional body or pursuant to some other disciplinary process;
 - (vii) he or it has made an assignment for the benefit of creditors, or has made an arrangement for the payment of a composition to creditors, or has had an interim order made by the court in respect of him, or is a specified person in relation to a relevant firm which has made such an assignment or composition or been wound up as an unregistered company, or entered into a voluntary arrangement, administration or liquidation, in each case where applicable under the Insolvency Act 1986, or other similar or analogous event has occurred in relation to him or it under applicable legislation; or
 - (viii) he or it has failed to satisfy a judgment debt without reasonable excuse for a period of two months (and the fact that he or it did not have sufficient funds to discharge the debt shall not be a reasonable excuse for this purpose) whether or not the debt remains outstanding at the time of the bringing of the disciplinary proceedings hereunder.
- (b) Each of the paragraphs in bye-law 8(a) shall be without prejudice to the generality of any of the other paragraphs therein.
- (c) For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession.
- (d) For the purposes of bye-law 8(a), in considering the conduct alleged (which may consist of one or more acts or omissions), regard may be had to the following:
- (i) whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;
 - (ii) whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question;
 - (iii) the nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.
- (e) The following shall be conclusive proof of misconduct:
- (i) the fact that a member, relevant firm or registered student has pleaded guilty to, or been found guilty of, any offence discreditable to him or, as the case may be, it, or derogatory to the Association or the accountancy profession, before a court of competent jurisdiction in the United Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are in the opinion of Council (or relevant committee of Council) relevant;
 - (ii) the fact that a member, relevant firm or registered student has been found to have acted fraudulently or dishonestly in any civil proceedings before any court of competent jurisdiction in the United Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are enforceable in the United Kingdom.

Unless there is a specific bye-law that relates to the alleged conduct (for example, having been disciplined by another professional body) then bye-laws 8(a)(i),(ii) or (iii)/(iv) may be engaged. Each allegation will normally be expressed by reference to the conduct specified in one of the bye-laws. The Committee must consider on the basis of the case presented to them whether they find that the acts or omissions are of sufficient gravity to amount to the allegation. For example, whether they amount to misconduct (bye-law 8(a)(i)), or they are performance-related deficiencies not amounting to misconduct (bye-law 8(a)(ii)) or whether they are perceived as being less serious and simply a breach of a regulation (bye-law 8(a)(iii)).

SECTION 3: POWERS AVAILABLE TO THE COMMITTEE

Disciplinary Regulation 5(9) sets out the sanctions and other orders available to the Disciplinary Committee:

The Disciplinary Committee may make any one or more of the following orders against the relevant person or may order that no further action be taken where it determines that none of the following orders is appropriate in the circumstances:

- (a) if the relevant person is a member:
 - (i) that he be excluded from membership;
 - (ii) that he be severely reprimanded, reprimanded or admonished;
 - (iii) that he be fined a sum not exceeding £50,000;
 - (iv) that he pay compensation to the complainant of a sum not exceeding £5,000;
 - (v) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (vi) any of the orders set out in regulation 5(9)(h) where applicable;
- (b) if the relevant person is a firm:
 - (i) that it be severely reprimanded, reprimanded or admonished;
 - (ii) that it be fined a sum not exceeding £50,000;
 - (iii) that it pay compensation to the complainant of a sum not exceeding £5,000;
 - (iv) that it waive or reduce its fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (c) if the relevant person is a registered student:
 - (i) that he be removed from the student register;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the student's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible for such period as shall respectively be specified in the order to sit for such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order;
 - (iv) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
 - (v) that he be severely reprimanded, reprimanded or admonished;
 - (vi) any of the orders set out in regulation 5(9)(h) where applicable;
- (d) if the relevant person is an affiliate:
 - (i) that he be removed from the affiliate register;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the affiliate's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible to be admitted to membership for such period as shall be specified in the order;
 - (iv) that he be severely reprimanded, reprimanded or admonished;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (e) if the relevant person is a former member or former firm:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) that he be fined a sum not exceeding £50,000;
 - (iii) that he pay compensation to the complainant of a sum not exceeding £5,000;
 - (iv) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (f) if the relevant person is a former registered student:
 - (i) that he be severely reprimanded, reprimanded or admonished;

- (ii) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
- (iii) any of the orders set out in regulation 5(9)(h) where applicable;
- (g) if the relevant person is a former affiliate:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) any of the orders set out in regulation 5(9)(h) where applicable;
- (h) in all cases:
 - (i) that the relevant person produce any necessary documents and supply any other information and explanations relevant to the matter in question, whether by attendance upon reasonable notice before the Disciplinary Committee or otherwise;
 - (ii) that the relevant person allow any officer of the Association to enter the business premises of the relevant person on such notice (if any) as the Disciplinary Committee may think appropriate and interview any employee of the relevant person;
 - (iii) that the relevant person procure the attendance of any of his employees at specific premises, upon reasonable notice;
 - (iv) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee by a specified date, such date to be no later than twelve months from the date of the order;
 - (v) only in conjunction with an order under regulation 5(9)(h)(iv), that the relevant person's practising certificate, insolvency licence, investment business certificate (Ireland) and/or other certificate issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions specified in the order, until an order of the Admissions and Licensing Committee has been made;
 - (vi) that any future application by the relevant person for any certificate or licence issued by the Association, or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee;
 - (vii) in the case of a relevant person who is an individual, that the relevant person's membership be suspended until further order of the Disciplinary Committee or Appeal Committee;
- (i) in all cases, that the hearing be adjourned and referred to a health hearing before a differently constituted Disciplinary Committee.

Appeal Regulation 11 sets out the orders available to the Appeal Committee:

- (1) On the conclusion of the hearing of the appeal, the Appeal Committee shall consider the appeal.
- (2) In the case of an appeal against one or more of the findings and orders of the Disciplinary Committee, the Appeal Committee may do any one or more of the following:
 - (a) affirm or vary any findings of the Disciplinary Committee;
 - (b) affirm, vary or rescind any order of the Disciplinary Committee;
 - (c) substitute any other order which the Disciplinary Committee could have made;
 - (d) order that the case be heard afresh by the Disciplinary Committee.
- (3) In the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee, the Appeal Committee may do either or both of the following:
 - (a) affirm, vary or rescind any order of the Disciplinary Committee;
 - (b) substitute any other order which the Disciplinary Committee could have made.

SECTION 4: PURPOSE OF SANCTIONS

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 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 and maintain the reputation of the profession by sending a signal as to how serious the Committee considers the conduct to be. In carrying out these roles the Committee is maintaining public confidence in the profession.

It was noted in Bolton v The Law Society [1994] 2 ALL ER 486 that the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession.

Proportionality

In deciding what sanction is appropriate, the Committee needs to weigh the interests of the member/student against the need for public protection. The Committee in considering an appropriate sanction will have regard to the public interest. This includes the protection of members of the public, maintaining public confidence in the profession and maintaining proper standards of conduct.

In order to ensure that any sanction imposed is proportionate to the level of seriousness of the conduct found proved, taking into account all the circumstances of the case, the Committee will need to consider:

- a) any aggravating or mitigating factors relevant to the conduct in question;
- b) the personal circumstances of the individual or firm (eg. financial position) and any other personal mitigation advanced by him, i.e. the circumstances which pertain at the date of the Committee's decision;

- c) any character and/or other references adduced in support of the individual or firm;

in order to ensure that the sanction imposed is the minimum necessary to achieve the purpose.

SECTION 5: DESCRIPTION OF THE SANCTIONS AVAILABLE

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

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 Disciplinary Regulation 5(9)(a)(ii) in Section 2 of this publication).

No further action

In all cases, 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.

Members, affiliates, students and firms

Admonishment

This is the lowest sanction that can be applied by the Committee. An admonishment may be appropriate where the conduct is at the lower end of the spectrum, but the Committee nevertheless wishes to indicate that the behaviour was unacceptable.

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

- a) evidence of no loss to the client
- b) evidence of member's understanding and appreciation of failings
- c) conduct was an isolated incident, not deliberate
- d) genuine expression of regret
- e) previous good history

Reprimand

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.

Severe Reprimand

A severe reprimand is appropriate where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy 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.

Exclusion/Removal from register (not available in relation to firms)

Exclusion/Removal from register is appropriate where this is 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/student were to remain on the register. 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

Members and firms

Conditions on practising certificates, other licences and eligibility to carry on exempt regulated activities

This sanction allows the member to continue to hold the certificate with certain restrictions. The imposition of conditions allows the practitioner 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 must be:

- appropriate;
- proportionate;
- workable; and
- 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

Withdrawal of, suspension of or ineligibility for practising certificates, other licences and eligibility to carry on exempt regulated activities

Suspension of a certificate until the occurrence of a specified event, or withdrawal of a certificate, may be used to send a signal to the practitioner, the profession and the public as to what is regarded as unacceptable behaviour. In relation to members, it is likely to be appropriate for conduct that is serious but not so serious to justify exclusion where there has been an acknowledgement of fault and the Committee is satisfied that the behaviour is unlikely to be repeated. Similarly, if the member no longer holds the certificate or licence, the Committee can order that he is ineligible to hold it for a specified period.

Please note that withdrawal of a certificate or licence is a sanction that is rarely imposed. This is because the Committee usually takes the view that where a member's conduct is so serious as to justify withdrawal of his practising certificate, the sanction of exclusion is also appropriate. An order for exclusion entails automatic withdrawal of any certificate or licence held. Similarly, where the member's conduct does not justify exclusion, the Committee usually takes the view that it does not justify

withdrawal of his practising certificate. However, see also 'Referral to Admissions and Licensing Committee' below.

In relation to firms, the position is slightly different because a sanction of exclusion is not available. Therefore withdrawal of a firm's certificate might be considered an appropriate alternative.

Fine

The Committee may impose a fine as the only sanction, or combine a fine with an additional sanction. For example, the Committee may feel that a particular sanction is appropriate, but that it should be combined with a fine to reflect properly the seriousness with which it views the conduct. Or a fine may be appropriate where a higher sanction was almost imposed; for example, a near exclusion might end up as a severe reprimand plus a large fine. In other cases, the fine may reflect the amount by which the member has profited from the breach. For example, if a member has been carrying on public practice without a practising certificate for a period, the fine might reflect the cost of the practising certificates he ought to have held throughout the period, or the amount of fees he has received for audits conducted when ineligible to do so.

Once the Committee has decided the appropriate amount of a fine, it may be reduced after taking into account the member's financial situation. It may not be increased if the member appears to be able to afford more.

Compensation

The Committee may order the member to pay compensation to the complainant to reflect any inconvenience suffered as a result of the member's or firm's failure to observe proper standards. This could be reimbursement of costs suffered (eg. if another accountant had to be employed to rectify the member's errors) or compensation for time spent or inconvenience suffered.

Waiver of fees

The Committee may order the member or firm to waive or reduce their fees to the complainant where appropriate.

Referral to Admissions and Licensing Committee

Where the Committee has not ordered exclusion but has concerns as to the member's fitness and propriety to hold a certificate or licence, it may either

impose its own sanction in relation to the certificate or licence or it may refer the matter to the Admissions and Licensing Committee. Similarly, where the member no longer holds the certificate, the Committee can order that any future application be referred to the Admissions and Licensing Committee. (See Disciplinary Regulations 5(9)(h)(iv) and (v) in Section 2 of this publication.)

Members, affiliates and students

Suspension of membership

There may be occasions where the Committee considers that exclusion/removal from register is the appropriate sanction, but there is going to be a delay until the matter is resolved. In order to protect the position in the meantime, the Committee may suspend an individual's membership pending further order of the Disciplinary or Appeal Committee (see Disciplinary Regulation 5(9)(h)(vi) in Section 2 of this publication).

An order for suspension of membership entails automatic suspension of any certificate or licence held.

Affiliates and students

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 Committee has the power to order that any part of the affiliate's or student's experience gained should not count towards such approved accountancy experience.

Affiliates

Ineligible for membership for a specified period

The Committee may order that an affiliate is not granted membership status for a specified period, notwithstanding that he may be eligible for membership.

Students

Ineligible to sit ACCA examinations for a specified period

The Committee may order that a student is not eligible to sit any examination, or part of 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.

Disqualification from one or more examinations

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.

Members, firms, affiliates and students

Other powers

The further powers contained in Disciplinary Regulation 5(9)(h) are not sanctions but orders which the Committee might wish to make where it is adjourning a case to a later date.

In addition, Disciplinary Regulation 5(9)(i) enables the Committee to refer the matter to a health hearing, if medical evidence indicates that the member is too ill to participate in the disciplinary process.

Former members and former firms

Severe reprimand, reprimand or admonishment, fine, compensation, waiver of fees, and the other powers contained in Disciplinary Regulation 5(9)(h) to the extent they are applicable.

Former affiliates

Severe reprimand, reprimand or admonishment, and the other powers contained in Disciplinary Regulation 5(9)(h) to the extent they are applicable.

Former students

Severe reprimand, reprimand or admonishment, disqualification from one or more examinations, and the other powers contained in Disciplinary Regulation 5(9)(h) to the extent they are applicable.

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. Please refer to Disciplinary Regulation 5(10) in ACCA's Rulebook for the Committee's powers in relation to costs.

Publicity

Publicity of the decision is automatic where an allegation has been found proved, unless no further action was ordered. Publicity is not a sanction, but it is mentioned here for completeness.

The normal order for publicity is that a press release be issued to the professional, national and 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 are any circumstances over and above those which flow naturally as a result of publication of disciplinary action against members.

Please refer to Disciplinary Regulation 5(15) in ACCA's Rulebook for the Committee's powers in relation to publicity.

SECTION 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 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 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 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 publication.

AUDIT

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| Acting as an auditor when ineligible. Responsible Individual signs audit report without conducting audit. Repeated seriously defective work | Audit work of a seriously defective standard (eg breaches of Statements of Auditing Standards). Lesser forms of poor audit work. |
| GUIDELINE: EXCLUSION | 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. See Sections 3 and 5 in this publication 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. See further the introductory paragraphs of Section 6 of this publication. | |

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

- Whether any loss to clients or third parties
- Consequences of incorrect/poor audit work
- Number of accounts audited and the period of time involved

Mitigating factors

- Inadvertent/minor breach of the regulations
- Steps taken to correct matters
- Subsequent audit work satisfactory

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).

INSOLVENCY

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| Acting as an Insolvency Practitioner without a licence Repeated seriously defective work | Failure to comply with the requirements of the Insolvency Act, Rules and Regulations and/or best practice (SIPS)/ethical guidance |
| GUIDELINE: EXCLUSION | 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. See Sections 3 and 5 in this publication 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. See further the introductory paragraphs of Section 6 of this publication. | |

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| <u>Aggravating factors</u> <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 | <u>Mitigating factors</u> <ul style="list-style-type: none"> • Prompt completion of outstanding work |
| The aggravating and mitigating factors listed are examples only and are not exhaustive. | |

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| 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). |

CLIENT MONIES*

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

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| <p>Unauthorised diversion of funds to own account, other estates or third parties</p> <p>Drawing unauthorised remuneration</p> <p>Misuse of company funds/ misappropriation of funds from trust or employer</p> <p>Failure to properly/adequately account for monies held on trust</p> <p>Acting in a manner contrary to beneficiaries' interest</p> <p>Serious failings/errors in administration of a trust</p> <p>Failing to repay client monies in accordance with terms of agreement</p> | <p>Client monies not held in designated client account</p> <p>Failure to pay interest on client monies</p> |
| <p>GUIDELINE: EXCLUSION</p> | <p>GUIDELINE: SEVERE REPRIMAND</p> |
| <p>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 and 5 in this publication for further information.</p> | |
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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

| <u>Aggravating factors</u> | <u>Mitigating factors</u> |
|--|--|
| <ul style="list-style-type: none"> • Large number of clients involved • Benefit to the practitioner resulting from improper retention of funds • Failure to deal promptly with the matter once notified of conduct • Loss to clients/third parties • Sums held for a long period • Account overdrawn | <ul style="list-style-type: none"> • Matters immediately rectified • Clients compensated for any loss • Procedures introduced to avoid recurrence |

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).

STUDENT ISSUES

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| <p>Misconduct relating to examinations, such as:</p> <p>Impersonation of another ACCA student</p> <p>Obtaining improper assistance from another</p> <p>Plagiarism</p> <p>Unauthorised materials in the possession of the student with intention to cheat (applicable to cases arising from examination sessions up to and including June 2007).</p> <p>Student holding out as ACCA Member</p> | <p>Failing to comply with instructions from invigilator</p> <p>Unauthorised materials in the possession of the student with no intention to cheat (applicable to cases arising from examination sessions up to and including June 2007).</p> |
| <p>GUIDELINE: REMOVAL FROM REGISTER</p> | <p>GUIDELINE: SEVERE REPRIMAND</p> |
| <p>The Committee may also consider other sanctions available to it. See Sections 3 and 5 in this publication 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. See further the introductory paragraphs of Section 6 of this publication.</p> | |

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| <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><u>Aggravating factors</u></p> <ul style="list-style-type: none"> • Failure to rectify conduct, where rectification is possible | <p><u>Mitigating factors</u></p> <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> | |

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).

CRIMINAL CONVICTIONS

Dishonesty offences

Serious assault

GUIDELINE:
EXCLUSION

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 and 5 in this publication for further information.

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Aggravating factors

- Nature and circumstances of the offence
- Sentence imposed by the Court

Mitigating factors

- 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 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 PC

Being a director, partner or sole proprietor in firm engaged in public practice without holding a PC

Falsely described/misrepresented the firm as Chartered Certified Accountants

Failing to hold (or hold adequate) PII

Students carrying on public practice

GUIDELINE: EXCLUSION

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 and 5 in this publication for further information.

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Aggravating factors

- Extensive practice
- Over significant period of time
- Continued conduct after became aware he was in breach
- Wilful failure

Mitigating factors

- 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 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 such as Solicitors' Accounts Rules. For Audit work please see separate guidelines on page 20.)

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

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 and 5 in this publication for further information.

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| <u>Aggravating factors</u> | <u>Mitigating factors</u> |
|---|---|
| <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 number of sets of accounts • Deliberate/reckless • Size of loss/error involved | <ul style="list-style-type: none"> • No loss • Client promptly recompensed for any loss • Had taken professional advice • Client unhelpful in providing accounts or gave insufficient or misleading 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 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: EXCLUSION

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 and 5 in this publication for further information.

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Aggravating factors

- Number of clients/ number of transactions conducted
- Failure to make clients aware of risks
- Lack of documentation on advice
- High value commission earned
- Breach is a criminal offence

Mitigating factors

- Improved office 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 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 director

GUIDELINE:
EXCLUSION

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Aggravating factors

- Length of disqualification

Mitigating factors

- Length of disqualification

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).

OTHER LIABILITIES AND BREACHES OF BYE-LAWS OR REGULATIONS

| | |
|--|---|
| <p>Failure to comply with an Admissions and Licensing Committee order or an undertaking given to ACCA</p> <p>Failure to co-operate with a disciplinary investigation</p> <p>Failure to co-operate with ACCA's monitoring process</p> <p>Bankruptcy</p> | <p>Being subject to an insolvency process other than bankruptcy</p> <p>Failure to satisfy a judgment debt without reasonable excuse for a period of 2 months</p> <p>Failure to inform ACCA of relevant matters indicating that member himself may be liable to disciplinary action (eg non disclosure of criminal conviction)</p> <p>Failure to comply with CPD requirements</p> <p>Failing to provide professional clearance or transfer information</p> |
| <p>GUIDELINE: EXCLUSION</p> | <p>GUIDELINE: SEVERE REPRIMAND</p> |

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| <p>Disciplined by another professional body</p> |
| <p>GUIDELINE: The Committee may have regard to the sanction imposed by the other body</p> |

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 and 5 in this publication for further information.

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| <u>Aggravating factors</u> | <u>Mitigating factors</u> |
|--|---|
| <ul style="list-style-type: none">• Period of time involved• Deliberate/reckless disregard of order/regulations | <ul style="list-style-type: none">• Steps swiftly taken to rectify breach |

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).

ETHICAL CONDUCT

| | |
|---|---|
| Deceiving/misleading ACCA/a statutory regulator | Unprofessional behaviour (a lack of courtesy and consideration) |
| Failing to act with integrity | |
| Lack of objectivity/independence | |
| Conflict of interest | |
| Breach of confidentiality | |
| GUIDELINE: EXCLUSION | 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. See Sections 3 and 5 in this publication for further information. | |
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| <u>Aggravating factors</u> <ul style="list-style-type: none"> • Deliberate/reckless • Position of trust held • Size of loss and/or error involved | <u>Mitigating factors</u> <ul style="list-style-type: none"> • Information provided carelessly/accidentally |
| The aggravating and mitigating factors listed are examples only and are not exhaustive. | |

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| 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). |