COMMON SANCTIONS GUIDANCE

Part 1

1 Background

There are five recognised professional bodies (RPBs) that license insolvency practitioners. Once an RPB has investigated the conduct of any insolvency practitioner it licenses, it can (under its own disciplinary processes) impose sanctions on that licence holder. Such sanctions can follow an investigation of a complaint or as a result of a finding on a monitoring visit carried out by the RPB or following the receipt of any other intelligence.

The regulatory objectives introduced in 2015 provide the RPBs with a clearer, enhanced structure within which to carry out their functions of authorising and regulating insolvency practitioners.

A RPB will, when discharging regulatory functions, be required to act in a way which is compatible with the regulatory objectives.

The Common Sanctions Guidance aims to ensure consistency with the regulatory objectives so that it enables RPBs to have a system in place which secures fair treatment for people affected by the acts of insolvency practitioners, is transparent, accountable, proportionate, and ensures consistent outcomes.

The circumstances that lead to a complaint and the issues that arise as part of the complaint will vary, possibly significantly, on a case-by-case basis. Not all complaints about an insolvency practitioner lead to them being disciplined. For example, errors of judgement and innocent mistakes are not generally considered to be misconduct. If, however, an insolvency practitioner has made a serious error or a repeated number of less serious errors , this may mean they've performed their work inefficiently or incompetently to such an extent or on such a number of occasions as to have brought discredit to themselves, their regulator, or the insolvency profession.

The *Common Sanctions Guidance* is not intended to be a tariff and does not bind each RPB's processes to a fixed sanctions regime. Although it gives an indication of the level of sanction to be imposed, each disciplinary committee or tribunal will use its own judgement to set a sanction appropriate to the circumstances of the individual case.

When a disciplinary committee or tribunal considers what would be an appropriate sanction, it will refer to this guidance and may, within its discretion, vary the sanction depending on aggravating and mitigating factors. Where a decision varies from the guidance the reasons for this should be clearly documented and explained by the RPB.

2 Sanctions

When a disciplinary committee or tribunal considers:

- whether to impose a sanction; and
- what sanction to impose,

it should consider the following factors:

- protecting and promoting the public interest;
- maintaining the reputation of the profession;
- upholding the proper standards of conduct in the profession; and
- correcting and deterring breaches of those standards;

When a disciplinary committee or tribunal decides that a complaint has been proved or where it is admitted, the committee or tribunal will decide the appropriate sanction. In doing so, the committee or tribunal will form its view based on the particular facts of the case. If the committee or tribunal decides a penalty (for example, exclusion, reprimand or a fine) is necessary it will identify the relevant category of complaint and the relevant behaviour.

There are two types of sanction available to the disciplinary committee or tribunal: non-financial sanctions and financial sanctions. The indicative sanctions (an indication of the sanction an insolvency practitioner might be given for a particular type of wrong doing) are set out in the table in Part 2. The actual sanction will be determined by the RPB's own rules and regulations and having regard to any aggravating and mitigating factors (see below).

Non-financial sanctions

These can range from a reprimand; severe reprimand; suspension of a licence or membership; withdrawal of a licence; to exclusion from membership, as set out in the RPB's bye laws.

The disciplinary committee or tribunal can use non-financial sanctions to indicate to the insolvency practitioner that their conduct falls short of the standards required. A non-financial disciplinary sanction will form part of that insolvency practitioner's disciplinary record. In some circumstances, a non-financial sanction (such as exclusion from membership or removal of the insolvency practitioner's licence) will affect an individual's ability to practise as an insolvency practitioner.

Financial sanctions

For each type of complaint there is a suggested starting point for a financial sanction. This is not a tariff or a "going rate" for the complaint but it simply indicates where the committee or tribunal might start when it looks at all the relevant factors relevant to deciding the penalty. Once the committee or tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding whether it is appropriate to reduce or increase the penalty. The committee or tribunal may decide on a more or less severe penalty than the starting point depending on all the circumstances of the case.

3 Aggravating and mitigating factors

The indicative sanction may need to be adjusted depending on the facts of particular cases.

A disciplinary committee or tribunal will normally consider the aggravating and mitigating factors summarised below before it decides on the appropriate level of sanction. The list is not exhaustive and not all the factors will apply to a particular case.

Once the disciplinary committee or tribunal has identified the factors it considers relevant, it should decide what weight to give to each of them.

4 Costs

Disciplinary committees and tribunals have the power to order the insolvency practitioner to pay the costs incurred during an investigation into a complaint. Orders for costs may reflect the costs reasonably incurred in investigating the complaint and are not imposed as a sanction. A disciplinary committee or tribunal will only consider the 'costs' element after it has decided the appropriate sanction for the complaint.

5 Publicity

When a disciplinary committee or tribunal makes an adverse finding and order, the RPB will publish the record of decision in the manner it thinks fit. The insolvency practitioner should be named in that publicity unless a disciplinary committee or tribunal orders no publicity or publicity on an anonymous basis, in which case reasons for not doing so will be provided by the disciplinary committee or tribunal. Disciplinary committees or tribunals will rarely order that there should be no publicity associated with an adverse finding.

From 1 November 2014, all published disciplinary sanctions are included on the Insolvency Service's website in an agreed format. The publication includes details of the IP, the nature of the complaint, the finding and any sanction together with reasons for the decision including aggravating and mitigating factors considered as part of that decision.

Part 2 - Indicative sanctions for various breaches of the Insolvency Act 1986, other relevant legislation and Statements of Insolvency Practice

The table below gives an indication of the level of sanction which may be imposed but should not be regarded as a tariff. Each disciplinary committee or tribunal will use its own judgement to set a sanction appropriate to the circumstance of the individual case, depending on the seriousness of the breach and the aggravating and mitigating factors.

Each sanction is split into three categories depending on the seriousness of the misconduct:

Very serious (a): This will generally mean that the insolvency practitioner's conduct was deliberate and/or dishonest.

Serious (b): This will generally mean that the insolvency practitioner's conduct was reckless.

Less Serious (c): This will generally mean the conduct by the insolvency practitioner amounts to an inadvertent breach. Where breaches are adjudged to be inadvertent, a financial or published sanction may not always be appropriate depending on the facts of the case and the aggravating and mitigating factors considered.

Where the conduct has resulted in a likely profit to the insolvency practitioner or their firm or any other connected party, the disciplinary/investigation committee or tribunal may issue a fine equivalent to the likely profit gained. The starting point for determining the likely profit will be 30% of the total fees charged by the insolvency practitioner or their firm or any other connected party for the engagement in question. A fine of this nature will only be adjusted (downwards) if the firm can produce cogent and reliable evidence that the financial benefit (profit) gained is less than the fine proposed.

Where a disciplinary/investigation committee or tribunal proposes to issue a fine for a breach that has led to a profit for the insolvency practitioner or their firm or any other connected party, the disciplinary/investigation committee or tribunal will issue a single financial sanction which will include both the fine for the estimated profit gained explained above as well as a variable fine listed in Part 3 below which will depend on seriousness of the misconduct, the facts of the case and be tiered alongside the appropriate non-financial sanction.

When considering allegations relating to unauthorised or excess remuneration, disciplinary committees or tribunals will in the first instance have regard to whether the unauthorised or excess remuneration has been repaid to the estate before deciding on an appropriate financial sanction.

	Allegation	Non-financial sanction	Starting point for financial sanction
1	Acts of dishonesty resulting in criminal convictions and/or adverse findings by regulatory and other bodies.	Exclusion and licence withdrawal	A financial sanction may not be appropriate in every case. Where a fine is considered appropriate, the starting point should be £15,000
2	Misappropriation of funds into own account, other estates or third parties	a) Exclusion and licence withdrawal	a) Fine of £20,000
3	Acting as an insolvency practitioner without a licence	a) Exclusion b) Severe reprimand c) Reprimand	a) Fine of £10,000 b) Fine of £5,000 d) Fine of £1,500
4	Drawing unauthorised remuneration	a) Severe reprimand b) Severe reprimand c) Reprimand	a) Fine equivalent to the level of the unauthorised fee drawn, or £10,000, whichever is greater b) Fine of £5,000 c) Fine of £2,000
5	Drawing of excess remuneration that has been deemed unfair or unreasonable	a) Severe reprimand b) Severe reprimand c) Reprimand	a) Fine of £7,500 b) Fine of £5,000 c) Fine of £1,500
6	Failure to submit returns (eg,	a) Severe reprimand	a) Fine of £5,000

	CDDA returns) or a delay in submitting returns where the delay is likely to impact on the conduct of the insolvency appointment	b) Reprimand c) Reprimand	b) Fine of £2,000 d) Fine of ,£1000
7	Failure to convene a creditor's meeting or a delay in convening a creditor's meeting where the delay is likely to impact on the conduct of the insolvency appointment	a) Severe reprimand b) Reprimand c) Reprimand	a) Fine of £5,000 b) Fine of £2,000 c) Fine of £1,000
8	Accepted an appointment as administrator when no statutory purpose achievable	a) Severe reprimand b) Reprimand	a) Fine of £7,500 b) Fine of £2,000
9	Failure to comply with the principles of a SIP, the Insolvency Act and rules and regulations thereunder	a) Severe reprimand b) Severe reprimand c) Reprimand	a) Fine of £7,500 b) Fine of £5,000 c) Fine of £1,500
10	Failure to take adequate steps to realise assets	a) Severe reprimand b) Reprimand c) Reprimand	a) Fine of £7,500 b) Fine of £2,000 c) Fine of £1,500
11	Delay in progressing administration of an insolvency estate	a) Severe reprimand b) Reprimand c) Reprimand	a) Fine of £5,000 b) Fine of £2,000 d) Fine of £1,500
12	Failure to respond at all, or a delay	a) Severe reprimand	a) Fine of £2,500

	in responding to letters, telephone calls or emails	b) Reprimand c) Reprimand	b) Fine of £1,500 c) Fine of £500

Part 3 - Indicative sanctions for various breaches of the Insolvency Code of Ethics

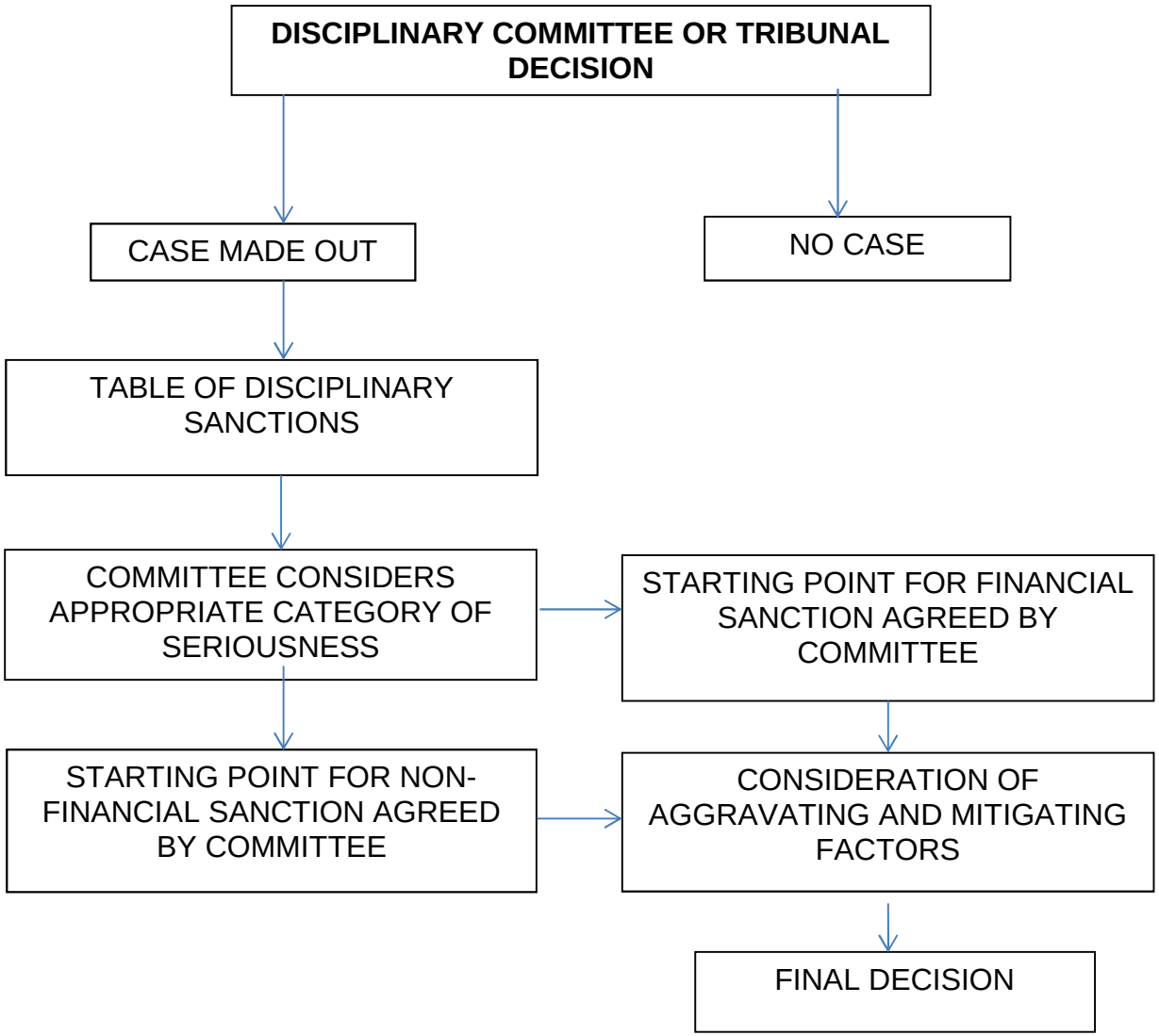
	Allegation	Non-financial sanction	Starting point for financial sanction
1	Failure to comply with the fundamental principle of integrity	a) Exclusion and consideration of licence withdrawal b) Severe reprimand	a) Fine of £10,000 b) Fine of £5,000
2	Failure to comply with the fundamental principle of objectivity	a) Exclusion b) Severe reprimand c) Reprimand	a) Fine of £10,000 b) Fine of £5,000 c) Fine of £2,000
3	Failure to comply with the fundamental principle of professional competence and due care	a) Exclusion b) Severe reprimand c) Reprimand	a) Fine of £7,500 b) Fine of £5,000 c) Fine of £2,000
4	Failure to comply with the fundamental principle of confidentiality	a) Exclusion b) Severe reprimand c) Reprimand	a) Fine of £5,000 b) Fine of £3,000 c) Fine of £1,500

5	Failure to comply with the fundamental principle of professional behaviour	a) Exclusion b) Severe reprimand c) Reprimand	a) Fine of £5,000 b) Fine of £3,000 c) Fine of £1,500

Aggravating factors

1 Concealment of wrongdoing
2 Lack of cooperation with regulator
3 Repeated course of conduct
4 Re-occurrence of conduct previously subject of reminder, warning or other sanction
5 The conduct has caused or is likely to cause the loss of significant sums of money to the insolvency estate and/or any third party
6 Poor disciplinary or regulatory history
7 Lack of understanding or acceptance of charge

Mitigating factors

1 Self-reporting, acceptance of conduct issues and prompt voluntary and immediate rectification
2 Self-reporting and prompt voluntary and immediate repayment of (unauthorised) fees
3 Personal mitigation: financial circumstances (when considering the financial part of the sanction only) Where the insolvency practitioner has difficulties in repaying a financial sanction, consideration should be given to offering payment in instalments
4 Personal mitigation; ill health
5 Age of issues under consideration in respect of less serious matters where there are no aggravating behaviours
6 Generally, minimal risk of re-occurrence or repetition where new procedures have been implemented and verified by the RPB
7 Absence of any loss of monies to the insolvency estate and/or any third parties

Flowchart of disciplinary process