



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

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Guideline to Disciplinary Committee for Determining Disciplinary Orders

HKICPA
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1. Objectives of the Guideline

- 1.1. This Guideline is designed to:
 - (a) provide a consistent and structured approach for a Disciplinary Committee (“DC”) when determining its order for sanctions and costs; and
 - (b) help to ensure reasonable consistency and fairness in the disciplinary orders made by DCs.
- 1.2. A DC is not bound by this Guideline but should refer to it as a starting point in its consideration of its order. The steps involved for the DC to form a judgement for each case are set out in section 4; and considerations for each step are discussed in sections 5 to 7 of this Guideline.
- 1.3. In considering the disciplinary orders to impose, a DC will have in mind the objects of the Institute as set out in section 7 of the Professional Accountants Ordinance (“PAO”) which include the following:
 - (a) to regulate the practice of the accountancy profession;
 - (b) to represent the views of the profession and to preserve and maintain its reputation, integrity and status; and
 - (c) to discourage dishonourable conduct and practices by certified public accountants.
- 1.4. Therefore, a DC would impose sanctions which are not only proportionate to the nature of the failure and the harm or potential harm caused by the breach, but also with the aim to:
 - (a) protect public interest;
 - (b) deter non-compliance with professional standards;
 - (c) maintain and promote public confidence in the profession; and
 - (d) declare and uphold proper standards of conduct and performance.
- 1.5. In giving reasons for its order, the DC should provide sufficient information on the considerations that it has taken into account in imposing the order.

2. Disciplinary Offences

- 2.1. Section 34 of the PAO contains the disciplinary provisions applicable to certified public accountants (“CPAs”).
- 2.2. CPAs who are found to be non-complaint under these disciplinary provisions will be subject to sanctions as imposed by the DC based on the DC's disciplinary powers as discussed in section 3 of this Guideline.
- 2.3. Disciplinary offences and sanctions with regards to registered students are set out in paragraph 3.3 of this Guideline.

3. Disciplinary Powers of DC

3.1. The disciplinary powers of a DC against a CPA, a firm of CPAs or a corporate practice are set out in section 35 of the PAO.

3.2. The sanctions imposed by DC could be any **one or more** of the following:

(1) Permanent or temporary removal from the register of CPAs

(a) Under section 35(1) of the PAO, DCs are empowered to order the removal of a respondent either temporarily or permanently from the Institute's register.

(b) When a DC orders that the name of a respondent be removed from the register for a period of time, there is a legitimate expectation that upon the expiration of the specified period, if the respondent has not committed another offence and is otherwise eligible, his application for readmission for membership is likely to be approved.

(c) When a DC orders that the name of a respondent be removed from the register permanently, there can be no such legitimate expectation on the part of the respondent.

(d) Whenever a DC orders that a respondent be removed permanently, it should refrain from recommending that an application for re-admission should not be approved within a specified period. Experience has shown that this tends to give rise to an unrealistic expectation that approval after the specified period will be favourably considered, which is often not the case.

(e) In determining the time when the removal should take effect, consideration must be given to section 41 of the PAO which provides that a respondent has a 30-day period to appeal an order against him. The date of effective removal should occur after that date. Usually, a period of 42 days is considered appropriate as it will enable a respondent to arrange his affairs before the removal order takes effect.

(2) Cancellation of respondent's practising certificate ("**PC**")

(a) Under section 35(1) of the PAO, DCs are empowered to order cancellation of respondent's PC, either permanently or for a specified period.

(b) Considerations under 3.2(1)(b) to 3.2(1)(e) above should also be applied to an order of cancellation of a PC.

(3) A Reprimand is the minimum sanction that should be handed down, though it may be implied if a removal order or cancellation of PC has been imposed. Whilst it may also be implied when a financial penalty is imposed, it is expected that a reprimand will accompany the imposition of a financial penalty.

- (4) Payment of a penalty not exceeding \$500,000 per respondent for each complaint
 - (a) There is no exact formula to determine the appropriate level of financial penalty that should be imposed. If the DC were to consider imposing a financial penalty, it should seek to impose a level of penalty that is both commensurate with the offence and is at a level that will provide adequate deterrence to members. Past disciplinary cases are of limited assistance.
 - (b) In imposing the appropriate level of financial penalty, the DC should take into account the respondent's financial circumstances. If the ability to pay is an issue raised by the respondent, it will be for the respondent to demonstrate, to the full satisfaction of the committee, his/her financial status.

3.3 Disciplinary Offences and Sanctions with regards to Registered Students

- (1) The disciplinary powers of a DC against a registered student are set out in By-law 35 of the Professional Accountants By-Laws.
- (2) The sanctions imposed by DC could be any one or more of the following:
 - (a) Removal from the register of registered students
 - (b) Ineligible for such period (not exceeding 2 years) to sit for examinations of the Institute
 - (c) Reprimand
 - (d) Admonish

3.4 In imposing the sanctions identified in 3.2 and 3.3 above, the DC may also consider the following:

- (a) When the sanction(s) it intends to impose should take effect (e.g. 3.2 (1)(e), above) and/or whether it should only apply on the occurrence or non-occurrence of a condition; and
- (b) Payment of costs and expenses of and incidental to the disciplinary proceedings. Under the PAO, the DC may make an order on costs with regard to the following:
 - Costs and expenses of and incidental to an investigation carried out under Part VA of the PAO (i.e. Investigation Committee ("IC")). If the DC is minded to order the repayment of the IC's costs, it will need to ascertain what actual costs have been incurred before payment is ordered.
 - Costs and expenses in relation or incidental to the investigation by the Financial Reporting Council ("FRC") that DC considers appropriate and reasonably incurred by the FRC.
 - Costs and expenses of and incidental to the disciplinary proceedings, whether of the Institute (including the costs and expenses of the DC) or of any complainant or of the CPA.

4. Steps taken by a DC in determining disciplinary orders

- 4.1. The DC is recommended to take the following steps in determining a disciplinary order.
- (1) Determine the seriousness of the offence (See section 5);
 - (2) Determine appropriate sanctions based on case severity **before** considering other factors (See section 6); and
 - (3) Consider impact of other factors on sanctions (i.e. past similar cases, aggravating and/or mitigating factors) in determining a disciplinary order (See section 7).

5. Determination of seriousness of offence

- 5.1. The DC should consider the full circumstances of each case before determining what sanctions should be imposed.
- 5.2. The following considerations are aimed to assist the DC in reviewing the circumstances of the case and determine the seriousness of the breach.
- (1) Nature and circumstances of the breach
 - (a) Nature of failure and/or offence
 - (b) Relative significance of the standard or regulation breached
 - (c) Level of responsibility of the respondent; position of trust; whether breach was committed in a professional capacity
 - (d) Level of public interest involved (e.g. professional services provided for listed or regulated entity or insolvent company, misleading/false statements on information to be relied upon by the public or other regulators)
 - (e) Whether the offence resulted in inappropriate benefits to the respondent, and the amount
 - (f) Actual or potential loss or harm caused by the breach, including monetary amounts
 - (g) Whether the breach could undermine confidence in the standards of the profession
 - (h) Whether the breach involved ethical issues
 - (i) Whether the breach may damage the reputation of the profession
 - (j) Whether the breach was isolated or recurring
 - (2) Conduct of respondent
 - (a) Whether the offence committed was intentional or deliberate
 - (b) Whether the offence occurred as a result of carelessness or recklessness
 - (c) Whether the offence was committed with an intention of depriving/appropriating properties belonging to other(s)
- 5.3. To help the DC achieve a structured and consistent approach in determining a disciplinary order, the seriousness of disciplinary offences could be increased by some of the following features:
- (a) Multiple and/or repeated breaches of regulatory requirements or principles
 - (b) Recklessness or blatant disregard for regulatory requirements or principles
 - (c) Nature and impact of the breach
 - (d) Actions that raise doubt on the respondent's integrity and/or professional competence
 - (e) Degree of high public interest
 - (f) Detrimental effect on reputation of and confidence in the profession

6. Starting points for sanctions

6.1 The suggested starting points for sanctions based on the seriousness of offence are listed below. Sanctions could be adjusted upwards and downwards based on the other factors as discussed in section 7.

Seriousness	Suggested Sanctions
Moderately serious	<ul style="list-style-type: none">• Reprimand; and/or• Financial penalty; and/or• Payment of costs and incidentals
Serious	<ul style="list-style-type: none">• Reprimand; and/or• Financial penalty; and/or• Cancellation of PC and not reissued for up to 1 year; and/or• Temporary removal from the register; and/or• Payment of costs and incidentals
Very serious	<ul style="list-style-type: none">• Reprimand; and/or• Financial penalty; and/or• Cancellation of PC and not reissued for at least 1 year; and/or• Temporary / Permanent removal from the register; and/or• Payment of costs and incidentals

6.2 Financial penalty

- (1) Under the Institute's regulatory system, cases which are considered as not serious enough to warrant disciplinary action would generally be concluded by a Resolution by Agreement ("RBA") which entails a public reprimand and financial penalty of an amount not exceeding \$50,000. The Institute views cases that are referred to the Disciplinary Panels as more severe than those concluded under an RBA and would, therefore, expect heavier sanctions.
- (2) The level of financial penalty should reflect the seriousness of the offence. It may also take into account any financial gains made by the respondent.
- (3) DC may also take into account the following when determining an appropriate level of financial penalty:
 - (a) The engagement fees or any other compensation received by the respondent
 - (b) The amount of financial gains or losses caused by the offence
 - (c) The amount of financial penalty imposed by other regulators for the matter under consideration.

6.3 Temporary removal from the register:

- (1) For convicted CPA members with imprisonment terms, the sanction should include a recommendation that the Institute will not approve an application for readmission for membership during the period of imprisonment.

7. Other Factors

- 7.1. After determining preliminary sanctions, the DC should consider if adjustments are needed before finalizing the disciplinary order. Factors that may warrant a change to the sanctions include past similar cases as well as aggravating and mitigating circumstances.

Past similar cases

- 7.2. Parties in the disciplinary proceedings may present past DC orders with similar case features to assist the DC in exercising their discretion on sanctions.

- 7.3. As each DC order is fact sensitive, the DC is not bound by the decision of a previous committee.

Aggravating and Mitigating Factors

- 7.4. Aggravating and mitigating factors are important in assisting the DC in exercising discretion when determining the level of sanction **after** the seriousness of the breach itself is established.

- 7.5. Consideration of aggravating and mitigating factors should have **no** bearing on the determination of the seriousness of the breach.

- 7.6. The DC may consider discounting a sanction in light of mitigating factors. However, any discounts should be transparent and the deterrent effect of the sanction should not be compromised. The onus is on the respondent to provide proof of mitigating circumstances for verification by DC, if requested.

- 7.7. The aggravating factors suggested below are not exhaustive:

- (a) Failure to cooperate with, or deliberate attempts to hinder the investigation.
- (b) Concealment of breach or attempt to reduce the risk that it would be discovered.
- (c) Failure to follow recommendations/directions after a practice review.
- (d) Failure to comply with relevant direction(s) from the Institute, other regulatory bodies, and/or the Court.
- (e) Failure to take remedial steps since identifying the breach.
- (f) Recurrence of breaches over an extended period.
- (g) History of non-compliance by the respondent.
- (h) Previous regulatory actions by the Institute or other professional/regulatory bodies. The more serious and/or similar the previous breach, the greater the aggravating factor.

- 7.8. The mitigating factors suggested below are not exhaustive:

- (a) Early admission of guilt by the respondent, thereby saving time and costs.
- (b) Respondent has demonstrated remorse.
- (c) Respondent has cooperated during the investigation.
- (d) Respondent had taken appropriate steps to stop or prevent the breach.
- (e) Appropriate remedial steps were taken promptly once the breach was identified.
- (f) Breach was an isolated event that is unlikely to be repeated.
- (g) Respondent did not gain any benefit from the breach.
- (h) Respondent had a good compliance history.
- (i) Respondent had genuine reason to believe that he complied with the professional standards.
- (j) Respondent was not the principal offender.
- (k) Respondent was under undue pressure or influence when committing the breach.
- (l) Sanctions and civil claims ordered by the Court or other authorities.

(m) Likely impact of any proposed penalty, including financial penalty on the respondent.

8. Decision of sanctioning orders

To protect the public interest by efficiently taking action in disciplinary matters, the DC should aim to hand down its written decision within six weeks from the date of parties' submissions on sanctions. If DC considers that it will take longer than six weeks to hand down its decision, it should notify the parties and indicate when it is likely to provide its judgment¹.

Date: 24 October 2017

¹ Paragraph 69A of the "Guidelines For The Chairman And The Committee On Administering The Disciplinary Committee Proceedings Rules"