

# IPReg Disciplinary sanctions guidance

## Who is this guidance for?

1. *Regulated persons* who are being taken through a disciplinary process, and their representatives, *IPReg* decision makers, *Case Examiners*, the *Interim Orders and Disciplinary Tribunal* and complainants and anyone else interested in knowing more about the approach to issuing sanctions.
2. This document should be read in conjunction with *IPReg's* decision making guidance which sets out general principles of decision making, and *IPReg's* commitment to the adherence to the *regulatory objectives* and best regulatory practice.

## Purpose of this guidance

3. This guidance sets out how those who make decisions in relation to sanctions following a disciplinary process, might approach the issue of sanctions in a particular case.
4. This document is for guidance only. All cases turn on their own facts and should be considered on their own merits. Decision makers are not bound by this guidance but where their decision deviates materially from the guidance, they should explain why it has done so.

## General principles

5. The purpose of sanctions is not to punish the respondent for wrongdoing, but to protect the public and the wider public interest, the need to maintain confidence in the profession and how it is regulated, the need to maintain the standards of the profession and to deter future misconduct from the respondent or any other member of the profession<sup>1</sup>. The sanction may have a punitive effect on the respondent, but that is not the primary purpose of imposing sanctions which is centred on the public interest and future risk.
6. Sanctions should only be imposed on the basis of facts that have been admitted or found proved which amount to misconduct.
7. As the purpose of sanction is not to punish the *regulated person* but to uphold the public interest, the decision maker should impose the least serious sanction available which achieves this *regulatory objective*. Sanctions should be proportionate and decision makers should bear in mind that it is not always in the public interest to prevent or severely restrict a *regulated person's* right to practise where they can

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<sup>1</sup> See *Bolton v Law Society* [1994] 1 WLR 512 and *Fuglers v SRA* [2014] EWHC 179 (Admin)

otherwise demonstrate the ability to bring value to the practice of intellectual property law and its consumers.

8. Determining the appropriate sanction is an exercise of judgement, requiring the need to balance the public interest with the interests of the *regulated person* having taken into account all the facts of the case, including both mitigating and aggravating factors.
9. *IPReg* seeks to uphold and promote the principles of the European Convention on Human Rights in accordance with the Human Rights Act 1998. As above, the interference with the *regulated person's* right to practise should be no more than is necessary to achieve the decision maker's purpose in imposing sanctions.
10. *IPReg's* disciplinary framework extends to all *regulated persons*, including *employees* who are not *registered attorneys*. Decision makers should therefore also take into account the role of the individual being sanctioned, when determining what will be a proportionate outcome.
11. Reasons must be given for the sanction imposed and pronounced publicly. Where the sanction decision makes reference to health or other issues which might reasonably be considered to be sensitive personal information, that part of the decision may be redacted.

### **Seriousness of the misconduct**

12. Decision makers will usually approach the process of considering and determining sanctions by making an assessment at the outset as to the seriousness of the misconduct.
13. What factors are relevant to the issue of seriousness will depend on each case and actual loss or harm caused to a *client* will not always be required for the misconduct to be considered serious.
14. The following are examples of how 'seriousness' might manifest in different cases:
  - a. There was actual harm or potential risk of harm caused to a *client*
  - b. The *regulated person* demonstrated wilful disregard for *IPReg's* regulatory arrangements
  - c. The matter involved dishonest conduct or a lack of integrity
  - d. The misconduct would undermine the reputation of, or *client* confidence in, the profession
15. The table below sets out different types of misconduct and the seriousness that may be attributed to it. This list is not exhaustive and the decision maker in considering the individual case might come to a different decision as to the seriousness of the misconduct. Where *client* harm has been caused or there was a real risk that it may

have been caused, some of the less serious misconduct may be escalated to a higher category.

<b>Very serious</b>	Dishonest conduct whether or not any person was harmed
	A criminal conviction for an offence of dishonesty, conduct of a violent or sexual nature or obstructing the course of justice
	A finding in a civil court that the <i>regulated person</i> was dishonest, obstructive to the legal process or acted without integrity
	Behaviour that is incompatible with the status of a professional person such as making racist, sexist, homophobic or defamatory comments in a public forum, including on social media <sup>2</sup>
	A reckless disregard for a <i>client's</i> interests, such as disclosing confidential information, practising without appropriate insurance arrangements in place or having insufficient processes in place to protect <i>client money</i>
	Carrying on <i>reserved legal activities</i> when not authorised to do so
<b>Serious</b>	Failing to comply with <i>IPReg's regulatory arrangements</i> or other requirements where there was no <i>client</i> harm or risk of harm
	Acting where there was a conflict of interest between two or more <i>clients</i>
	Acting beyond competence or allowing another person to act beyond their competence
	Acting in a way that is intended to mislead but which falls short of overt dishonesty or where there is reckless disregard as to whether a <i>person</i> may be misled
<b>Less serious</b>	Poor file management which does not cause <i>client</i> harm

<sup>2</sup> IPReg is a signatory to [Tackling Counter-inclusive Misconduct through Disciplinary Processes](#) which confirms IPReg's commitment to pursuing the elimination of counterinclusive practices

	Technical breaches of <i>IPReg's regulatory arrangements</i> , such as failing to keep contact information up to date
	Failing to respond to a <i>client</i> in a timely manner or keep them updated
	Poor complaints handling or a failure to provide complaints information to a <i>client</i>

### Aggravating and mitigating factors

16. In making an assessment as to the appropriate sanction, the decision maker must take into account both aggravating and mitigating factors. The weight to give any particular factor or combination of factors will be a matter of judgement and may impact on any assessment as to the seriousness of the misconduct.

17. The decision maker should bear in mind the principle established in *Bolton v Law Society* [1994] 1 WLR 512:

*“Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. .... All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to reestablish his practice when the period of suspension is past. If that proves, or appears, likely to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.”*

18. The written decision on sanction should clearly identify which aggravating and mitigating factors were considered, and how they were weighed in coming to the decision on sanction.
19. Some common mitigating and aggravating factors are set out below. This is not an exhaustive list and decision makers may come to a different decision on the facts of the individual case. The factors listed are not in any order of importance of significance.

Mitigating	Aggravating
No previous disciplinary history	The <i>regulated person</i> has a previous disciplinary history, whether in relation to similar or entirely different misconduct
No harm was caused to <i>clients</i> or others as a result of the behaviour	The behaviour caused harm to others, particularly <i>clients</i>
Evidence that <i>regulated person</i> has insight into behaviour and there is very little risk of behaviour being repeated	<i>Regulated person</i> displays no insight into behaviour and there is little confidence that behaviour won't be repeated
The <i>regulated person</i> engaged and was co-operative with <i>IPReg</i> and its investigation and disciplinary processes (or other agency as relevant)	The <i>regulated person</i> did not engage or co-operate with <i>IPReg</i> , and/or sought to conceal or minimise wrongdoing
Applicant admitted poor behaviour and engaged appropriately with authorities	Applicant sought to cover up any wrongdoing, or to mislead or hinder any investigation into their behaviour
Evidence that <i>regulated person</i> has taken steps to remedy the behaviour	No evidence that <i>regulated person</i> has taken steps to remedy behaviour
Evidence of remorse and where appropriate, reparation	<i>Regulated person</i> has not demonstrated remorse or made reparation
Misconduct occurred a long time ago	Misconduct is recent
Misconduct was a one-off incident that has not been repeated	There is a pattern or several incidences of such behaviour
The misconduct was 'spur of the moment' or opportunistic	The behaviour was premeditated or intentional

The misconduct was as a result of a mistake or oversight	The <i>regulated person</i> acted with reckless disregard as to likely consequences of their conduct
The applicant was junior and/or inexperienced	The applicant was senior and/or in a position of trust and/or involved misusing their position
The <i>regulated person</i> is not a <i>registered attorney</i> or <i>HoLP</i> or <i>HoFA</i>	The <i>regulated person</i> is a <i>registered attorney, HoLP</i> or <i>HoFA</i>

## Sanctions

### Case Examiners

20. The sanctions available to *Case Examiners* are set out at Chapter 4, 1.6 of the Core Regulatory Framework. These are:
- 1.6.3.1 a warning;
  - 1.6.3.2 a reprimand;
  - 1.6.3.3 the signing of an *undertaking*;
  - 1.6.3.4 a financial penalty;
  - 1.6.3.5 suspension from the *register*.
21. More than one sanction can be imposed on the *regulated person*, so long as the overall sanction is considered to be proportionate.
22. *Case Examiners* may only impose a sanction on the *regulated person* where there is agreement as to facts and an admission of misconduct. The *Case Examiners* should inform the *regulated person* of the sanction or variety of sanctions that are in mind, and invite the respondent to provide any submissions or evidence in mitigation before making a final decision on the appropriate sanction. Other than in the case of *undertakings*, the *Case Examiners* need not confirm exactly the form the sanction will take, such as providing the proposed wording of a warning or reprimand, or the exact figure in the case of a fine (though a range might be provided). In the case of *undertakings*, the *regulated person* should have notice of what the *undertaking* might require them to do so as to ensure they are willing and capable of complying with them.
23. A short explanation of the sanctions available to *Case Examiners* and a guide as to when they might be suitable, is set out in the table below. Decision makers are not bound by this guidance and may decide, based on the facts and merits of the individual case before them, that the indicated sanction may be inappropriate.

Sanction	Explanation	When it may be appropriate
Warning	A statement setting out <i>IPReg's</i> expectations as regards future conduct	Less serious misconduct such as a failure to respond to <i>IPReg</i> promptly with information sought, where there is evidence of likely co-operation by the <i>regulated person</i>
Reprimand	A statement designed to signal <i>IPReg's</i> disapproval of the misconduct to send a message to the <i>regulated person</i> and the wider profession that such misconduct will not be tolerated	Less serious misconduct which might have demonstrated a careless disregard for consequences, such as failing to respond to <i>client</i> communications
<i>Undertakings</i>	An agreement signed by the <i>regulated person</i> to do or refrain from doing an activity or exhibiting a certain type of behaviour. Compliance with <i>undertakings</i> will be monitored. A breach of an <i>undertaking</i> could result in further disciplinary action	Less serious to serious misconduct where there is strong evidence of co-operation and a commitment to compliance by the respondent, such as acting in a conflict of evidence which did not result in <i>client</i> harm and where the <i>regulated person</i> undertakes to undergo training and improve internal processes
Financial penalty <sup>3</sup>	A fine. The <i>regulated person</i> can make arrangements with <i>IPReg</i> to pay in instalments if required. <i>Case Examiners</i> should not impose a fine unless the <i>regulated person</i> has been invited to provide evidence of their means to pay	Less serious to serious misconduct, including where there may be a small element of <i>client</i> harm. A fine may be appropriate where there has been misconduct on more than one occasion suggesting a lack of regard for appropriate professional behaviours
Suspension from the register	The <i>registered attorney</i> may be suspended from one or both <i>registers</i> , as relevant and applicable with the	Serious to very serious misconduct where there is strong evidence of an attorney's insight, remorse,

<sup>3</sup> Monies received by *IPReg* by way of a fine are used by *IPReg* in pursuance of its legitimate regulatory activities and are accounted for in its published financial reports.

	<p>effect that the attorney may not, during their period of suspension, undertake any <i>reserved legal activities</i> or use a protected title<sup>4</sup>. Suspension from the <i>register</i> can cause real disruption to an attorney's professional practice, their <i>clients</i> and their employer, so it would be rare for <i>Case Examiners</i> to impose a period of suspension longer than 12 months</p>	<p>remediation and motivation to comply with all of <i>IPReg's regulatory arrangements</i> in the future. An example may be where an attorney misleads a <i>client</i> in relation to a missed filing date but where no actual <i>client</i> harm is caused</p>
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24. There is no right to appeal any decision made by the *Case Examiners*.

25. Where the two *Case Examiners* cannot agree as to an appropriate sanction, they should refer the case to the *Disciplinary and Interim Orders Tribunal* for a *Disciplinary Panel* hearing.

#### *Disciplinary Panel*

26. The *Disciplinary Panel* may decide not to impose any order as to sanctions. If it considers a sanction is appropriate, those available to the *Disciplinary Panel* are set out at Chapter 4, 3.4 of the Core Regulatory Framework. These are:

- 3.4.1 a warning;
- 3.4.2 a reprimand;
- 3.4.3 the signing of an *undertaking*;
- 3.4.4 a financial penalty;
- 3.4.5 imposition of conditions on registration or authorisation;
- 3.4.6 suspension from the *register* or of authorisation or of an *advocacy or litigation certificate*;
- 3.4.7 revocation of an *advocacy or litigation certificate*;
- 3.4.8 disqualification from being an *employee, manager* or approved role holder of a *registered body*;
- 3.4.9 removal from the *register*.

27. More than one sanction can be imposed on the *regulated person*, so long as the overall sanction is considered to be proportionate.

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<sup>4</sup> See s276 Copyright, Designs and Patents Act 1988 and s84 of the Trade Marks Act 1994



28. A short explanation of the sanctions available to the *Disciplinary Panel* and a guide as to when they might be suitable, is set out in the table below. Decision makers are not bound by this guidance and may decide, based on the facts and merits of the individual case before them, that the indicated sanction may be inappropriate.

<b>Sanction</b>	<b>Explanation</b>	<b>When it may be appropriate</b>
Warning	A statement setting out <i>IPReg's</i> expectations as regards future conduct	Less serious misconduct such as a failure to respond to <i>IPReg</i> promptly with information sought, where there is evidence of likely co-operation by the <i>regulated person</i>
Reprimand	A statement designed to signal <i>IPReg's</i> disapproval of the misconduct to send a message to the <i>regulated person</i> and the wider profession that such misconduct will not be tolerated	Less serious misconduct which might have demonstrated a careless disregard for consequences, such as failing to respond to <i>client</i> communications
<i>Undertakings</i>	An agreement signed by the <i>regulated person</i> to do or refrain from doing an activity or exhibiting a certain type of behaviour. Compliance with <i>undertakings</i> will be monitored. A breach of an <i>undertaking</i> could result in further disciplinary action	Less serious to serious misconduct where there is strong evidence of co-operation and a commitment to compliance by the respondent, such as acting in a conflict of evidence which did not result in <i>client</i> harm and where the <i>regulated person</i> undertakes to undergo training and improve internal processes
Financial penalty <sup>5</sup>	A fine. The <i>regulated person</i> can make arrangements with <i>IPReg</i> to pay in instalments if required. The <i>Panel</i> should not impose a fine unless the <i>regulated person</i> has been invited to provide evidence of their means to pay	Less serious to serious misconduct, including where there may be a small element of <i>client</i> harm. A fine may be appropriate where there has been misconduct on more than one occasion suggesting a lack

<sup>5</sup> The maximum level of fine to be imposed on *registered attorneys*, their *employees* and *managers* will be £5m and the same limit will apply to *HoLPs* and *HoFAs*, The upper limit for *registered bodies* will be £25m. In respect of *licensed bodies* and related individuals, the upper limits will be £250m and £50m respectively.

		of regard for appropriate professional behaviours
Imposition of conditions	These amount to a restriction on registration, or a direction that the <i>regulated person</i> may only provide patent or trade mark services in a particular way or in particular circumstances	Serious misconduct, including where there may be a small element of <i>client</i> harm. Conditions may be appropriate where the <i>regulated person's</i> conduct suggests they are capable of providing patent or trade mark services in accordance with regulatory requirements in some circumstances but not all. An example may be a condition that the <i>regulated person</i> works in a supervised capacity for a period of time and may not provide services as a sole trader without authorisation from <i>IPReg</i>
Suspension from the <i>register</i> / suspension of authorisation	The <i>regulated person</i> may be suspended from one or both <i>registers</i> , as relevant and applicable with the effect that the <i>regulated person</i> may not, during their period of suspension, undertake any <i>reserved legal activities</i> or use a protected title <sup>6</sup>	Serious to very serious misconduct where there is strong evidence of insight, remorse, remediation and motivation to comply with all of <i>IPReg's regulatory arrangements</i> in the future. An example may be where an attorney practised without insurance for a limited period of time
Suspension of an <i>advocacy or litigation certificate</i>	The <i>registered attorney</i> may not, during their period of suspension, undertake any litigation or advocacy	Serious to very serious misconduct, connected to the provision of litigation services or advocacy
Revocation of a litigation certificate	The <i>registered attorney</i> may not undertake any litigation	Very serious misconduct connected to the provision of litigation services
Disqualification	The <i>registered attorney</i> may not be any or all of an	Very serious misconduct which caused a significant risk of, or

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<sup>6</sup> See note 3

	<i>employee, manager or approved role holder of any registered body or licensed body. This will include bodies that are regulated by another approved regulator</i>	actual, harm to a <i>client</i> or breached in a significant way, one of the <i>Principles</i> . An example may be practising without insurance for a lengthy period of time or being dishonest in court proceedings
Removal from the register	The <i>regulated person</i> is permanently removed from the <i>register</i>	Very serious misconduct which is wholly incompatible with the practice of law, such as dishonesty or a serious conviction

### Costs

29. The *Case Examiners* or the *Disciplinary Panel* may, upon application from *IPReg*, direct that the respondent pay *IPReg's* reasonable costs in investigating and bringing proceedings against the respondent.
30. The decision maker should take into account the following principles<sup>7</sup>:
- a. The purpose of a costs order is to compensate the applicant for the costs incurred by it in bringing the proceedings and not to serve as an additional punishment for the respondent;
  - b. Costs orders should not exceed the costs actually and reasonably incurred by the applicant.
31. Before making any order as to costs, the decision maker should give the respondent the opportunity to provide financial information and make submissions. As *IPReg* will serve upon the *regulated person* a Schedule of Costs in advance of the *Case Examiners* meeting and/or *disciplinary hearing*, the *regulated person* should be in a position to provide financial information to the decision maker at the time the decision is made. Any adjournment to obtain and provide such information will be at the discretion of the decision maker.
32. Where the *regulated person* submits that they are not in a position to pay costs or should pay costs at a reduced amount or by way of a payment plan, the onus is on them to demonstrate this.
33. The decision maker may make a costs order even where not all of the allegations brought by *IPReg* were found proved. In such a case, the decision maker should take into account the following factors:

<sup>7</sup> See *R v Northallerton Magistrates Court, ex parte Dove* (1999) 163 JP 894

- a. the extent to which the allegation was reasonably brought by *IPReg*;
- b. the extra costs incurred in pursuing the unsuccessful allegation;
- c. the extra time taken for the decision maker in considering the unsuccessful allegation;
- d. the extra costs borne by the *regulated person* in defending the unsuccessful allegation.

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Rationale</b>
V1.0	24.3.23	IPReg	Submitted with LSB application