

# **Professional Conduct Procedure**

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## **Sanctions**

## About this document

The Institution's member conduct and disciplinary procedures are governed by its Royal Charter, By-laws and Regulations. As a supplement to these the Institution publishes a series of information documents, of which this is one. The relationship between these different types of document is shown below.

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<b>1</b>	<b>Royal Charter</b>	The Royal Charter is an instrument of incorporation granted by the UK monarch. It confers independent legal personality on the Institution and defines its objectives, constitution and powers to govern its own affairs including the power to make By-laws.
<b>2</b>	<b>By-laws</b>	The By-laws are approved by the Privy Council. They set out the rules that govern the actions of the Institution. They set out the general standards of conduct required of Institution members and require the Trustee Board to make Code of Conduct Regulations. They also define improper conduct, require the Trustee Board to make Disciplinary Regulations and set out members' liability to be penalised if found guilty of improper conduct.
<b>3</b>	<b>Regulations</b>	The Regulations set out the directives made by the Institution Trustees in defined subject areas, including the Code of Conduct Regulations and the Disciplinary Regulations.
<b>4</b>	<b>Information</b>	Information documents supplement the Regulations and are intended to help people who engage with the Disciplinary Procedures.

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All of the documents listed above are available on the Institution's website.

## Sanctions

- Introduction**
1. This document is intended to provide guidance and is not intended to inhibit decision makers from using their own discretion when considering an appropriate sanction in individual cases.
- Who can order a sanction?**
2. Sanctions may be ordered by the Disciplinary Board if it reaches a finding of improper conduct.
- Available sanctions**
3. The four sanctions available are:
    - Admonition
    - Reprimand
    - Suspension
    - Expulsion
  4. The sanctions are defined and the relationship between them are shown in the Summary of Sanctions at Table 1.
- No sanction**
5. In rare cases it may be appropriate to impose no sanction, despite a finding of improper conduct. This might occur when, for instance, the member was significantly incapacitated at the time of the events, or there was no impact on third parties or the reputation of engineers, the profession or the Institution. In such cases cogent reasons must be given for imposing no sanction.
- Purpose and principles of sanctions**
6. The purpose of applying sanctions for improper conduct are:
    - a. To protect the public and users of engineering services;
    - b. To maintain high standards of behaviour and performance;
    - c. To promote public and professional confidence in the Institution and the profession
    - d. To promote and protect confidence in the Institution's Disciplinary Regulations.
- Weighting**
7. The purposes outlined above have equal weighting. In fulfilling these purposes, it is important to prevent reoccurring improper conduct on the part of the Institution member as well as to provide an example in order to maintain public confidence in the Institution and the profession. Decision makers must take all of these factors into account when determining the appropriate sanction to be ordered in an individual case. Decision makers should also bear in mind that

sanctions are preventative and not intended to be punitive in nature but may, nevertheless, have that effect.

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| Deterrent                       | 8. In some instances, the sanction ordered may be necessary to act as a deterrent to other members of the Institution. When considering a sanction, it may be necessary to deter the individual member from repeated improper conduct but also to send a message to other members and the public that such behaviour will not be tolerated. A deterrent sanction would be particularly applicable where there is evidence that the conduct in question seems prevalent among Institution members.  |
| Proportionate                   | 9. Decision makers should ensure that the sanctions ordered are proportionate, weighing the interests of the public with those of the Institution member. Proportionality will vary according to the nature of the case. A member's first-time offence is less likely to warrant a more severe sanction than in a similar offence having been committed many times, without remorse or any attempt to remedy the situation.  |
| Individual case                 | 10. Each case is different and should be decided on its particular facts and merits. As noted in the introduction, this guidance should be used to support the Board's decision making but does not seek to impose a tariff or to fetter the Board's discretion.   |
| <b>Determining the sanction</b> | <p>11. In deciding what sanction to impose, the Board must apply the principle of proportionality by weighing the interests of the public with those of the Defendant. The Board should begin their consideration of sanction with the least restrictive. If the least restrictive sanction is, in the Board's judgment, insufficient, it should move to consider the next sanction, and so on until it reaches the appropriate sanction.</p> <p>12. Having established the sanction they are minded to apply, the Board should also consider the next most severe sanction to satisfy themselves that the sanction they are minded to apply is appropriate. It is good practice for Boards to explain in their determination why it is not necessary to impose the next most severe sanction to that which they have ordered.</p> |
| Protecting the public interest  | <p>13. Any sanction, and the period for which it is imposed, must be necessary to protect the public interest.</p> <p>14. The Board exists to protect the public interest, which includes:</p> <ul style="list-style-type: none"> <li>a. protecting clients, colleagues and the wider public from the risk of harm;</li> </ul>   |

- b. maintaining public confidence in the profession;
  - c. upholding the reputation of the profession; and
  - d. declaring and upholding appropriate standards of conduct and competence among Institution members.
15. The public interest also requires that the Defendant receives a fair and impartial hearing.
16. The Board should always bear in mind that its main concerns are the protection of the public and the maintenance of public confidence in the profession.
- Sanctions are not punitive
17. The purpose of imposing a sanction is not to punish the Defendant but to protect the public and the wider public interest described above. However, the sanction imposed may be punitive in effect.
- Mitigation, aggravation, references and testimonials
18. The Board will need to consider mitigation offered by the Defendant at the submission and determination stages and decide the extent to which this should influence its judgment on the finding and the sanction to be imposed. This will depend on the individual circumstances of each case and should always be balanced against the primary aims of sanctions: the protection of the public; the maintenance of public confidence in the profession; and the promotion of appropriate standards and behaviour among Institution members.
19. In some cases, a Defendant's conduct may be so seriously below appropriate standards that they will be judged to be fundamentally unsuited for membership of the Institution: in that case, remorse, apologies or positive personal qualities would not be relevant considerations. Similarly, because past conduct can call into question current suitability for membership, time having elapsed may not provide mitigation for certain behaviours, in the context of continuing membership and the public interest.
20. The Board will need to consider whether there are any mitigating factors to the case. Mitigating factors may include:
- a. The member admits the charge
  - b. genuine and evidenced remorse
  - c. limited experience within the profession
  - d. the conduct was unintentional
  - e. single incident (not applicable if the conduct involves discrimination)
  - f. heat of the moment (not applicable if the conduct involves discrimination)

- g. co-operation with the investigation
- h. voluntary steps taken to remedy or rectify the impact of the conduct
- i. evidence of steps taken to prevent reoccurrence
- j. previous good character
- k. evidence of financial hardship (only applicable when it has had a direct impact on the commission of the conduct)
- l. particular personal circumstances that provide a reasonable explanation for the conduct. In particular, bereavement, relationship breakdown and divorce; matters such as pressure of work and bankruptcy should be treated with caution as these factors may indicate a greater risk to the public in the member's on-going practice)
- m. good references (only of limited applicability and very much dependent on the nature of the offence and the role and identity of the referee)

(Note: the absence of actual harm should not be considered as mitigation.)

21. Similarly, the Board will need to consider whether there are any aggravating factors to the case. Aggravating factors may include:
- a. premeditation
  - b. motive of financial gain
  - c. corruption/gross deception
  - d. coercion
  - e. involvement of others
  - f. persistent conduct or conduct over a long period of time
  - g. undermining the profession in the eyes of the public
  - h. attempts to hide the misconduct or to lay the blame elsewhere
  - i. effect on the Complainant or particular vulnerability of the Complainant
  - j. actions accompanied by discriminatory behaviour (does not require intent)
  - k. breach of trust
  - l. bullying or harassment (does not require intent)
  - m. position of responsibility within the profession
  - n. previous disciplinary findings for similar offences
  - o. lack of remorse
  - p. failure to comply with an investigation
  - q. lack of insight (see below).
22. A Defendant may provide references and testimonials to support their standing in the community and/or the profession.

23. When considering such references, the Board should consider how recent they are, whether the writers were aware of the allegations against the Defendant and whether they were aware that their letters would be put to the Board as mitigation.
24. However, the panel should not draw negative inference from an absence of references or testimonials.
- Insight
25. In the context of a hearing, insight on the part of the Defendant is an important factor. Insight might be defined as an expectation that they will be able to:
- a. review their own performance or conduct;
  - b. recognise that they should have behaved differently in the circumstances being considered; and
  - c. identify and put in place measures that will prevent a recurrence of such circumstances.
26. When considering whether or not a Defendant has insight, it will be necessary for a Board to consider whether or not the Defendant has demonstrated insight consistently throughout the hearing – for example, in the giving of their evidence. The Board should also consider whether the Defendant has displayed insight prior to the hearing – for example, by putting measures in place to prevent a repetition of the circumstances which led to the hearing (if appropriate).
27. The Board should be aware that individuals may have different ways of expressing insight and that these may be impacted upon by an individual's circumstances as well as questions of culture and language. For example, an individual using a second language may be using the constructs of their first language to order their sentences and statements, which could result in a loss of subtlety or of appropriate emphasis in the second language.
28. Given that the panel's interests are the protection of the public, the maintenance of public confidence in the profession and the promotion of appropriate standards and behaviour in the profession, the fact that a Defendant has recognised that corrective actions need to be undertaken is more important than the manner in which their insight is expressed.

Table 1: Summary of sanctions

Sanction In ascending order of severity	Definition	Membership implications:				May lead to:	
		Loss of membership rights and privileges	Liable to pay further subscription or fees referable to that period	Right to refund of subscription or other fees paid in respect of periods yet to expire	Removal of Engineering Council registration (when through the Institution)	More serious sanction	Requirement to contribute to costs of proceedings
<b>Admonition</b>	Warning advice on conduct or behaviour without any loss of the rights and privileges of membership.	No	Not applicable	Not applicable	Not applicable	Yes	Yes
<b>Reprimand</b>	Severe reproof of conduct or behaviour without any loss of the rights and privileges of membership.	No	Not applicable	Not applicable	Not applicable	Yes	Yes
<b>Suspension</b>	Temporary removal from Institution membership for a stated period or, if longer, until readmitted pursuant to By-law 20.	Yes	No	No	No	Yes	Yes
<b>Expulsion</b>	Permanent removal from Institution membership.	Yes	No	No	Yes	No	No



**Guidance on the application of sanctions**

- Admonition** 29. This is the least severe sanction that can be applied. It may be considered where:
- a. the conduct or matter had minimal effect on any other party and/or the public and/or the reputation of the individual, profession or Institution;
  - b. the member has fully co-operated with any enquiry by the Institution; the member has demonstrated that (s)he has insight into his/her failings in the matter;
  - c. the member has expressed genuine regret;
  - d. the member has taken any possible corrective steps before any enquiry or intervention by the Institution or any of its representatives;
  - e. the member has a previous good disciplinary history with the Institution (and with any other relevant body so far as is known).
- Reprimand** 30. A reprimand is the next most severe sanction. It may be used in situations at the lower end of seriousness where it would be appropriate just to mark the conduct as unacceptable. It might be appropriate where the Disciplinary Board is satisfied that there is no significant risk or damage to the public or the professional reputation of the individual member or the reputation of the profession or the Institution.
31. The reprimand shall include a warning that any further finding of improper conduct may lead to suspension or expulsion or the requirement that the Defendant shall pay a specified sum of money as a contribution to the costs of the proceedings. The warning is therefore focused on future conduct of the member and seeks to modify behaviour in a way that promotes the public interest.
32. The Disciplinary Board should consider carefully whether a reprimand is sufficient to prevent risk of damage to the public or the reputation of the profession and the Institution.
- Suspension** 33. Suspension is appropriate for improper conduct that is serious, but not so grave that complete removal from membership and registration is appropriate. A suspension order may be considered when any of the following factors are present (but this list is not exhaustive):
- a. the conduct or offence is so serious that a reprimand or imposition of conditions is deemed insufficient either to

protect the public or to protect the reputation of the profession;

- b. the behaviour is not necessarily incompatible with continuing to be an engineering professional;
- c. there is no evidence of entrenched integrity issues;
- d. the Disciplinary Board is satisfied that the behaviour is unlikely to be repeated;
- e. the conduct is capable of being rectified; and
- f. a lesser sanction would not be capable of protecting the public or protecting the reputation of the profession.

34. A member who is suspended may not for the duration of the suspension:

- a. hold him/herself out as a member of the Institution (nor make any reference to his/her membership) or;
- b. use their Institution post-nominal designation (e.g. MIMechE) in business or in connection with acting as an engineering professional.

### **Expulsion**

35. The Disciplinary Board may remove a person from Institution membership for conduct and/or an offence that is so serious that only removal will protect the public and/or the reputation of the profession. If the Defendant to be expelled is an Engineering Council registrant, registered through the Institution, their registration shall also be removed. Removal from membership may be considered where any of the following, or similar, factors are present:

- a. dishonesty or a severe lack of integrity;
- b. the Committee lacks confidence that repetition of the conduct will not occur;
- c. a persistent lack of insight into the seriousness of actions or consequences;
- d. repeated failure to engage with the disciplinary process constructively;
- e. a conviction, caution or finding of guilt for a serious criminal offence; and
- f. behaviour that is fundamentally incompatible with being an engineering professional.

36. A member who is expelled may not:

- a. hold him/herself out as a member of the Institution (nor continue to make any reference to his/her past membership) or;
- b. use any Institution post-nominal designations (e.g. MIMechE) in business or in connection with acting as an engineering professional.

**Consensual Disposal**

37. Sanctions are ordered by the Disciplinary Board when it reaches a finding of improper conduct after a hearing.
38. It is important to distinguish between sanctions and Consensual Disposal.
39. Although both are the result of a finding of improper conduct and, therefore significant expressions of disapproval by the Institution, sanctions are considered more serious.