

**SANCTIONS POLICY**  
**SECTION 1**

**PART A - INTRODUCTION**

This Sanctions Policy (the "Policy") sets out the Society's approach to the application of disciplinary sanctions to a Member under the Rules. The Policy should be referred to by the Director of Regulation, the Reviewer, the Professional Conduct Committee and Appeal Board when issuing Fixed Penalty Notices, imposing sanctions or considering appeals under the Rules. The Policy is designed to supplement the Rules and does not replace or override the Rules. Where there is a conflict between the Rules and the Policy, the Rules shall prevail.

The Policy shall take effect from 18<sup>th</sup> September 2018.

**Definitions**

Expressions and terms when used in the Policy shall have the meanings ascribed to them in the Articles of Association of the Society, the Bye-Laws of the Society and the Rules unless the context otherwise requires.

In the Policy, the term "Relevant Decision Maker" means where the context so requires the Director of Regulation, the Reviewer, the Professional Conduct Committee and the Appeal Board.

**1 Policy Approach**

- 1.1 The Society has developed the Policy to ensure that a fair and consistent approach is taken in relation to Members that face disciplinary action.
- 1.2 The Policy provides general guidance on how disciplinary sanctions should be applied and is designed to inform Members who find themselves involved in a disciplinary process. It supports the Society's intention that Members who are disciplined are assisted, where possible, through help and guidance in bringing them into compliance with the Rules as well as having a system for the imposition of proportionate and dissuasive sanctions where breaches of the Rules are established.
- 1.3 The Policy will be reviewed by the Society from time to time and may be amended and/or replaced as the Society considers appropriate.
- 1.4 The Policy provides for:
  - Fixed Penalties
  - Sanctions which may be imposed by the Relevant Decision Maker



- Administration Fees
- Costs

1.5 Any fine or compensation payable pursuant to the Policy is payable in Euro.

## **2 Status of the Policy**

- 2.1 Those making decisions on the application of the Society's disciplinary sanctions should be guided by the Policy. No provision in the Policy should override the requirement for the Relevant Decision Maker to take account of the individual circumstances of each case when making a decision.
- 2.2 The decision as to whether any sanction is required and the level of such sanction is a matter for the Relevant Decision Maker who shall have an absolute discretion in reaching any decision under the Rules and this Policy.

## **3 Principles of Natural and Constitutional Justice**

- 3.1 The Society is committed to ensuring that its processes are compatible with the principles of Natural and Constitutional justice.

## **PART B - GENERAL CONSIDERATIONS**

The following general considerations apply to decisions by a Relevant Decision Maker. These lists are indicative only and non-exhaustive.

### **4 What are the relevant factors when considering the sanction for a breach**

- 4.1 The relevant factors when considering the sanction for a breach are:
- The seriousness of the breach;
  - Whether the breach involved wrong doing/blame, recklessness or dishonesty;
  - The damage to the public or consumers and the amount of any loss as a result of such damage;
  - Whether the breach involved client money;
  - The Member's level of experience in practice;
  - Where relevant, the length of time over which the breach occurred;
  - The number and frequency of any breaches;
  - The duration of the breach(es);
  - Risk of damage to the Society's and/or Members' professional reputation;



## **5 General mitigating factors**

### 5.1 General mitigating factors are:

- Steps taken to rectify breaches and to put things right, or to avoid a repeat of the breach in the future;
- Responsibility taken by the Member for any failings;
- Whether the Member notified the Society of the breach;
- Any admission and/or regret expressed;
- Any steps taken by the Member to compensate the client concerned;
- Willingness to assist the Society;
- Ill health, family or particular personal issues of the Member;
- The Member's responsiveness to the Society's request for information and the manner of the Member's engagement with the Society;

## **6 General aggravating factors**

### 6.1 General aggravating factors are:

- The extent to which the Member has benefited or stood to benefit from the breach and the number or frequency of the breach(es);
- The deliberate concealment of relevant facts;
- The Member's responsiveness to the Society's request for information, the manner of the Members engagement with the Society and/or the failure of the Member to engage with the Society.

## **PART C - OTHER CONSIDERATIONS**

### **7 Other matters to be considered by a Relevant Decision Maker in making its decisions**

#### 7.1 The following matters should also be considered by a Relevant Decision Maker in making its decisions:

- Necessity - The necessity to deter the Member and other Members from future non-compliance.
- Effectiveness - The need to ensure that any sanction is effective to achieve the Society's objective as regards the Member's conduct.
- Proportionality - The penalty must be proportionate to the breach and all the circumstances.
- Transparency - The necessity for the Society's functions and decision making processes to be transparent.



- Accountability - The need to demonstrate to the Society and to other Members that the Society takes appropriate and proportionate action in order to protect the public interest and promote regulatory compliance.
- Consistency with the principles of Natural justice and Constitutional justice.

## **8 Reasons for penalty**

8.1 In every case reasons should be given in writing for the decision made in relation to a particular penalty or sanction.

## **PART D - FIXED PENALTIES**

### **9 What is a Fixed Penalty and when is it applicable**

9.1 A Fixed Penalty is a fixed fine payable and/or caution imposed in accordance with the Rules by the Member for a breach of the Rules.

9.2 A Fixed Penalty is only applicable to a breach of the following Rules:

- Rule 2.5 and Part 5 – Continuing Professional Development.
- Rule 2.8 – Information to be provided to the Society.

This list will be reviewed by the Society from time to time and may be amended as the Society considers appropriate.

### **10 How is a monetary Fixed Penalty Calculated**

10.1 Please refer to Section 2 of the Sanctions Policy: Fines, Costs and Administration Fees for further details about the level of Fixed Penalties and how they are calculated.

### **11 Review/Modification of a Fixed Penalty**

11.1 A Member may request a review of the imposition of a Fixed Penalty.

11.2 A Reviewer may review and, where appropriate, modify a Fixed Penalty. Where this occurs the Fixed Penalty may be modified in such manner as the Reviewer may determine.

11.3 If the Member has paid a monetary Fixed Penalty but is referred to the Professional Conduct Committee because of a continuing breach of the Rules then the Professional Conduct Committee should have regard to the fact that the Society has received payment for the monetary Fixed Penalty when it is considering imposing any fine.

11.4 If the Member has not paid a monetary Fixed Penalty and continues to be in breach of the Rules, and is referred to the Professional Conduct Committee then the Professional Conduct



Committee should have regard to the fact that the monetary Fixed Penalty has not been paid when considering the level of any fine it may decide to impose.

## **PART E - PROFESSIONAL CONDUCT COMMITTEE AND APPEAL BOARD**

### **12 Imposition of penalties**

- 12.1 The Professional Conduct Committee may impose one or more of the penalties referred to in Rule 6.4.1.
- 12.2 A caution may be imposed by the Relevant Decision Maker if the Member's breach is minor, unintentional and is unlikely to be repeated.
- 12.3 A reprimand may be imposed by the Relevant Decision Maker if it is determined that the breach has been established but, taking into account the factors set out in clauses 4,5,6 & 7, it is decided that the breach should be acknowledged but that a reprimand will be a proportionate sanction. Depending on the severity of the breach, the reprimand will remain on the disciplinary file maintained by the Society relating to the Member for 2 years from the date of notification to the Member of the reprimand.
- 12.4 A Member may be suspended from membership for periods up to 12 months. The timescale for any suspension will be specified in the decision to suspend the Member.

### **13 Undertakings**

- 13.1 In some cases a Professional Conduct Committee (or Appeal Board on appeal) may decide to request undertakings from the Member as well as imposing another penalty such as a caution, reprimand or fine. The Professional Conduct Committee (or Appeal Board on appeal) may do this in order to ensure that the Member refrains from continuing/repeating the conduct or action causing the contravention. The Professional Conduct Committee (or Appeal Board on appeal) may require the Member to take a course of action such as apologise personally or publicly to a person.
- 13.2 Where it has been determined by the Relevant Decision Maker that the standard of the Member's professional work has fallen short of that reasonably to be expected, or instructions have been accepted from a client where the Member does not have the necessary competence, the Relevant Decision Maker may require the Member to:
- Refrain from practising in a particular specialism, or
  - Practice that specialism under supervision, or
  - Refrain from practising a specialism until he has satisfied the Society of his competence in that field.



13.3 A timescale for compliance with the terms of an undertaking will usually form part of the undertaking itself. Every undertaking will contain a statement that a breach of such undertaking will result in automatic referral to a Professional Conduct Committee.

13.4 A failure to comply with an undertaking may be considered to be misconduct liable to further sanction.

#### **14 Fines, Costs and Administration Fees**

14.1 For the level of fines, costs and administration fees which the Society may impose, please refer to Section 2 of the Sanctions Policy.

#### **15 Conditions on a Member's continued membership of the Society**

15.1 Conditions on a Member's continued membership of the Society should be specific, measurable, achievable, realistic and time bound.

15.2 If a Professional Conduct Committee (or Appeal Board on appeal) imposes conditions it should state whether a breach of these conditions by the Member will lead to automatic expulsion or removal, or whether further disciplinary action is appropriate.

#### **16 Making of an Order requiring a Member to take a specified action**

16.1 The Professional Conduct Committee (or Appeal Board on appeal) may make an order requiring a Member to take specific action to rectify a breach or to make restitution for an established breach. The Professional Conduct Committee (or Appeal Board on appeal) shall specify what is required to be done and the timescale for such action to be taken. The Professional Conduct Committee (or Appeal Board on appeal) shall specify the consequences of failure to take such action.

#### **17 Misconduct and Grounds for Expulsion**

17.1 In the absence of extenuating circumstances, the following are examples of instances likely to result in a Professional Conduct Committee or Appeal Board making or upholding a decision to expel a Member:

- Gross, persistent or wilful failure of a Member to comply with any of the Rules, any provisions of the Society's Memorandum of Association or Articles of Association or Bye-Laws;
- Fraud, dishonesty or a lack of integrity on the part of a Member;
- Conviction of a Member for a serious criminal offence;
- Gross incompetence or recklessness in relation to the conduct or management of professional activities on the part of a Member;



- Persistent and/or serious failure by a Member to co-operate with the Society or its staff;
- Breach by a Member and/or failure to comply with a required undertaking previously given to the Society, or failure to give an undertaking without reasonable excuse;
- Gross mismanagement of finances by a Member;
- Misappropriation of clients' money by a Member; or
- Actions likely to damage the Society's reputation.

17.2 The above list at Clause 17.1 is not an exhaustive list and each case must be considered on its own facts. The Relevant Decision Maker is given discretion to apply the most appropriate sanctions in any particular case.

## **18 The Professional Conduct Committee may impose more than one penalty**

18.1 The Professional Conduct Committee (or Appeal Board on appeal) may impose more than one of the penalties provided for in the Policy or the Rules. Where the Member is expelled, the Professional Conduct Committee (or Appeal Board on appeal) may also impose a fine, undertaking or conditions.

## **19 The penalties which the Appeal Board can impose**

19.1 If the Appeal Board allows an appeal by the Member and varies either the Professional Conduct Committee's finding or penalty, it may impose the same range of penalties as the Professional Conduct Committee. It may vary the penalty imposed to one of greater or lesser severity than that previously imposed.

19.2 In addition, the Appeal Board may refer the matter back to the Professional Conduct Committee for a new hearing or re-consideration.

## **PART F- COSTS**

### **20 Payment of Costs**

20.1 In addition to any fine or penalty, the Relevant Decision Maker may also require that the Member pay the Society the costs reasonably and necessarily incurred by it in the matter. The Society may set rates from time to time and may publish them on the Society's website.



**THE SANCTIONS POLICY**  
**SECTION 2**  
**FINES, COSTS AND ADMINISTRATION FEES**

**INTRODUCTION**

This section sets out the details of fines and costs which may be imposed according to the Rules.

**1 Fines**

1.1 The policy of the Society is that Fixed Penalty fines will be imposed for breaches of the following Rules:

- Rule 2.5 and Part 5 Continuing Professional Development (fines which may be imposed for breaches of the CPD Policy are set out in Rules 5.2.1 – 5.2.3).
- Rule 2.8, Information to be provided to the Society.

1.2 Pursuant to Rules 6.4.1 (e) and 7.11 (b), the Professional Conduct Committee and Appeal Board respectively may impose a fine up to a maximum of €50,000 per breach. This maximum limit will be subject to periodical review.

1.3 Where fines (including Fixed Penalty fines) have been imposed by a Relevant Decision Maker for breaches of the Rules, the following penalty may be imposed upon the Member for failure to discharge the said fine (including Fixed Penalty Fine) as provided for in the relevant decision, the Rules and this Sanctions Policy:

<b>Delay in Time in complying with Rule</b>	<b>Members – level of fine or penalty which may be imposed</b>
1 – 28 days late	€150
29 – 56 days late	€250
57 – 84 days late	Refer to Professional Conduct Committee

The fines specified above are cumulative.

Information will be considered to be late when it has not been submitted by the due date. Unless provided otherwise the due date will be the date set out in the correspondence from the Society. The correspondence will state that a Fixed Penalty





will be imposed if specific information is not received by the Society by a specified date.

## 2 COSTS

2.1 The costs which may be imposed are as follows:

<b>Cost</b>	<b>Amount</b>
Hearing costs*	To be charged by reference to the costs actually incurred by the Society, taking into account, without limitation the elements listed below.
Investigation and Inspection costs of Society's Regulation Department	€75 per hour
Disciplinary costs of Society's Regulation Department	€75 per hour

\*The Society is entitled to charge the Member concerned the actual costs incurred by the Society. This may include, but will not be limited to, the following costs and expenses:

- Panel Members expenses
- Legal Costs
- Recording
- Hire of venue
- Teleconferencing costs for virtual hearings
- Expert Costs



### 3 Administration Fees

Fees	Amount
Fixed Penalty – may apply an administration fee for review by a Reviewer	€100 per Fixed Penalty

### 4 REVIEW OF FINES, COSTS AND ADMINISTRATION FEES

- 4.1 The basis of the fines, penalties and costs contained in this section has been approved by the Society and will be periodically reviewed.



**THE SANCTIONS POLICY**  
**SECTION 3**  
**PUBLICATION OF REGULATORY/DISCIPLINARY MATTERS**

**1 Introduction**

- 1.1 This section sets out the Society's approach to the circumstances in which and the proceedings in relation to which regulatory/disciplinary matters may be published.

**2 Policy Approach**

- 2.1 The Society believes that there are circumstances in which it is essential for members of the public, Members' clients and potential clients to be aware of an individual Member's disciplinary record. There are, however, other circumstances where it is appropriate to record regulatory breaches without identifying the individual concerned.
- 2.2 Where a Member has breached the CPD Policy on two occasions, within a five-year period, as provided for in Rule 5.2, the Society will publish on the Society's website a list of members who are non-compliant for a second time. This publication to remain on the website for a period of one year from imposition of sanction.
- 2.3 The Society, at its discretion, may arrange to publish any decisions of the Professional Conduct Committee and/or the Appeals Board in such a manner as the Society may think fit.
- 2.4 All proceedings and deliberations of the Professional Conduct Committee and the Appeals Board unless made in public shall be confidential and Members shall, as a matter of professional obligation, maintain such confidentiality.
- 2.5 Where a case is to be heard in public before the Professional Conduct Committee or the Appeals Board a notice will be placed on the Society's website and if appropriate a notice may be placed in the national press and a press release may also be issued. Such notice will include the date, time and location of the hearing as well as a brief summary of the complaint. It will not include the name of the Member against whom the complaint has been made.
- 2.6 Decisions or orders of the Professional Conduct Committee and the Appeals Board may be disclosed, at the discretion of the Society and depending on the gravity of the breach, to other regulatory, disciplinary or law enforcement bodies either pursuant to a reporting obligation or where it is considered necessary to do so and the disclosure is not unlawful.
- 2.7 Sanctions and/or penalties imposed by the Professional Conduct Committee and/or the Appeals Board will be published as soon as practicable provided the Professional Conduct Committee and/or the Appeals Board has not directed otherwise, and the time allowed under the Rules for



appealing the decision of the Professional Conduct Committee and/or the Appeals Board has elapsed.

2.8 Without prejudice to the generality of clause 2.7 in the event that, following a decision of the Professional Conduct Committee and/or the Appeals Board, a Member is to be suspended or excluded from membership of the Society such suspension or expulsion shall be published.

2.9 Unless provided otherwise publication may be by way of one or more of the following:

- Inclusion on the website of the Society
- Notice in the Surveyor Journal;
- Notice in a national or local newspaper;
- Press release; or
- Inclusion on a public register;

### **Regulatory Matters**

#### **3 Fixed Penalties**

3.1 A list setting out the number of Fixed Penalties (publication for breaches of the CPD Policy are provided for at Section 3, point 2.2 of this Policy) issued during the previous quarter, including the subject matter thereof will be placed on the Society's website. This information will remain on the Society's website for 12 months from its date of publication on the Society's website and individual Members will not be identified.

