

Educational Sanctions

Guidance

1 July 2024

1. Introduction

- 1.1 The public places trust in Members of The Institute of Actuaries of Australia (the Institute) to hold high standards. In acknowledging that trust the Institute strives to ensure that its Members uphold the highest technical, professional and ethical standards. The Institute is committed to holding its Members accountable to those standards
- 1.2 The Institute has a Disciplinary Scheme to address conduct which falls short of the standards expected. This helps to protect the public as well as maintain and protect the standards, professionalism and reputation of our Members.
- 1.3 We use our regulatory powers to protect consumers of actuarial services, preserve public confidence in the Institute and our Members and maintain the actuarial profession's standards. It is important that our Disciplinary Scheme decision makers can arrive at appropriate sanctions for the Members that we regulate and that those sanctions reflect community expectations as well as serving to maintain the Institute's reputation and standards.
- 1.4 This guidance has been issued by the Council of The Institute in accordance with [clause 13.2](#) of the Disciplinary Scheme (effective April 2018) (the Scheme).
- 1.5 This guidance should be read in conjunction with, and after having read, the Institute's [guidance on Sanctions](#).
- 1.6 This guidance applies to all Complaints being considered under the Scheme as amended from time to time. For Complaints that are being considered under a former version of the Institute's Disciplinary Scheme, the version of the guidance applicable to the former version of the Disciplinary Scheme should be applied to the extent that it is possible to do so, otherwise this guidance will apply.
- 1.7 This guidance does not override any provision of the Scheme
- 1.8 It is for use by:
 - (a) The Convenors, and any Conduct Committee, Investigating Sub-Committee, Tribunal, Appeal Board, or Panel appointed under [clause 5 of the Scheme](#), referred to in this and other Guidance as the Scheme decision maker, to provide further detail on their powers and procedures to be followed;

- (b) any other party, so they are aware of the powers of the Scheme decision maker and the procedures to be followed; and
 - (c) Institute staff.
- 1.9 This guidance should also be read in conjunction with:
- (a) the Scheme; and
 - (b) any regulations issued by the Council; and
 - (c) any other relevant guidance published by the Council.
- 1.10 This guidance does not override any provision of the Scheme.
- 1.11 Where there is any conflict or inconsistency between the Scheme and this guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between regulations and this guidance, the regulations shall be followed.
- 1.12 Definitions of defined terms used in this guidance are set out in the Scheme.
- 1.13 This guidance is not and should not be treated as legal advice. When appropriate, the Scheme decision maker may seek legal advice on questions of law and/or procedure, which may include advice on the use of this guidance.
- 1.14 The Council will review this Guidance every five years or earlier if needed. It may be updated in the interim when circumstances require a change.

2. Aim

- 2.1 This guidance aims to promote proportionality, accountability, clarity, consistency, transparency, efficient and targeted decision making by the Scheme decision maker when considering the imposition of sanctions;
- 2.2 This guidance:
- (a) provides guidance to the Scheme decision maker in determining sanctions when a finding of prima facie Misconduct or Misconduct has been made, or where during the Disciplinary Scheme process there has been an admission of misconduct by a Member including when a Professional Conduct Undertaking is proposed;
 - (b) helps parties understand the approach likely to be taken by the Scheme decision maker when determining sanctions;
 - (c) does not amount to a prescriptive set of rules. The exercise of its powers in imposing any sanction is a matter solely for the Scheme decision maker to determine. The Scheme decision maker is not bound by this guidance, or by the decisions of other Scheme decision makers. However, a Scheme decision maker will provide written reasons when they depart from this guidance.

3. When should this guidance be used?

- 3.1 The Scheme decision makers should refer to this guidance in the following circumstances:
- (a) when any Professional Conduct Undertakings are being proposed or decided; and after having specific regard to the guidance on Professional Conduct Undertakings;
 - (b) when an Investigating Sub-Committee determines that a prima facie case of Misconduct is established, and they are inviting the Respondent to resolve the case;
 - (c) when a Tribunal determines the Respondent has committed Misconduct and is considering sanctions; and
 - (d) when an Appeal Board determines the Respondent has committed Misconduct and is considering sanctions.

4. Purpose of sanctions

- 4.1 The primary objective of sanctions is not to inflict punishment upon a Respondent (though that may be their effect). The main objectives of sanctions are to:
- (a) protect members of the public;
 - (b) promote and maintain public confidence in the profession; and
 - (c) declare and uphold proper standards of conduct and competence.
- 4.2 Any sanction, or combination of sanctions, should be considered necessary to achieve the objectives listed above and in doing so the Scheme decision maker must balance the public interest with the Respondent's interests.

5. Circumstances in which educational sanctions may be appropriate

- 5.1 The purpose of requiring that a Member complete an additional period of education, retraining and/or supervised practice, is to ensure that they are sufficiently trained and knowledgeable in areas where a breach of the Actuaries' Code of Conduct, or other professional standards, may demonstrate that they are lacking in the required expertise or standard of professionalism.
- 5.2 An educational sanction by its nature is a rehabilitative sanction and can often be appropriately combined with other sanctions.

- 5.3 Educational sanctions were designed for those cases where a Scheme decision maker considers that all the following apply, namely:
- (a) it is in the public and/or the profession's interest for the Respondent to receive such a sanction;
 - (b) it is the most appropriate means of response to a deficiency of knowledge, skills and/or behaviour, or to an error, which has come to light from the evidence in a case report or charge of Misconduct;
 - (c) the identified deficiency is amenable to improvement through a period of education, and/or retraining, and/or supervision.
- 5.4 There may be cases where a Respondent is willing to co-operate with an educational sanction but where the public or professional interest requires a different response. It will be a matter for the Scheme decision maker to consider the circumstances of the case and in consideration of the public interest, to decide the appropriate sanction to be imposed.
- 5.5 Educational sanctions may also be applied, where appropriate, in conjunction with other sanctions, such as a reprimand, a fine or suspension of Membership, the Scheme decision maker must consider whether it is feasible for the Respondent to achieve the desired educational goals, given the limitations on practice caused by the other sanction.

6. Circumstances where an educational sanction may not be appropriate

- 6.1 An educational sanction is unlikely to succeed where the Respondent has failed to engage in the disciplinary process or has failed to show any insight.
- 6.2 If an educational sanction is not considered appropriate, other sanctions should be considered.

7. General principles

- 7.1 The purpose of educational sanctions should be:
- clearly defined by the Scheme decision maker;
 - demonstrably relevant to the needs of the Respondent;
 - proportionate to the allegations under consideration and the identified deficiency;
 - achievable by the Respondent;
 - affordable for the Respondent; and,
 - completion must be demonstrable.

8. Specification in determination

- 8.1 For all types of educational sanctions the Scheme decision maker should clearly specify:
- (a) Precisely which area(s) of the Respondent's knowledge, skills and/or behaviour are deficient and in need of educational sanction (e.g. timeliness of work, communications with clients, quality of work);
 - (b) The specific learning outcomes and objectives of the sanction;
 - (c) Which of the following is required: a period of education, or of retraining, or of supervised practice, or a combination of any of these sanctions; and
 - (d) The deadline for when the Respondent is required to complete the educational sanction.
- 8.2 It is important for the Scheme decision maker to be sufficiently clear in the written determination that compliance is the responsibility of the Respondent in order to avoid raising his or her expectations or that of others that the Institute is under an obligation to provide education, or retraining; or that employers are under an obligation to provide sources of support.

9. Education and/or retraining

- 9.1 For educational sanctions involving education and/or retraining the Scheme decision maker should specify:
- (a) the concerns that education and/or retraining should redress and what the learning outcomes and objectives are in relation to these concerns. The Scheme decision maker will not usually specify the type of course or learning material unless has something specific in mind.
 - (b) the minimum number of required hours of training expected and a completion date for submission of the training proposal. The training would be additional to that required under the Institute's CPD Scheme.

10. Supervised practice

- 10.1 For education sanctions involving supervised practice the Scheme decision maker should specify:
- (a) the time period over which supervision should occur and how often reports should be submitted by the supervisor to the Institute's Professional Standards Manager.
 - (b) the closeness of the supervision required, from simple peer review of completed work, to more stringent arrangements, taking into account:
 - (c) the extent of the supervision may, for example, vary from 'adequately supervised' to 'close personal supervision' of work by the Respondent;
 - (d) the differing levels of supervision – select that which is most appropriate in the individual case.
 - (e) the referral should make as clear as possible to the Respondent to what extent supervision is required and over what particular practice areas.
 - (f) supervision should normally be undertaken by a senior actuary.
- 10.2 The Scheme decision maker should direct the Respondent to identify a suitable supervisor. The proposed supervisor must submit a curriculum vitae and statement confirming the nature and extent of the supervision proposed to the Institute's Professional Standards Manager for approval before the appointment of that person becomes effective. The costs associated with the periods of supervised practice are to be met by the Respondent.
- 10.3 The supervisor should be advised that upon completion of the period of supervision a report should be submitted to the Institute. The report should detail the supervision undertaken; specify how the areas of practice identified by the Scheme decision maker had been addressed; and how the Respondent demonstrated his or her commitment to the sanction. Where compliance has not been met by the Respondent, the supervisor should detail the reasons in that report.
- 10.4 A copy of the report should be provided by the supervisor, in writing, to the Institute's Professional Standards Manager.

11. Compliance

- 11.1 Where any of the above sanctions have been imposed the Respondent should be obliged to confirm in writing to the Institute's Professional Standards Manager when compliance has been achieved and provide any documentary evidence relevant to that sanction.

Document control

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1.0	1 July 2024	Guidance for Educational Sanctions Disciplinary Scheme effective 1 July 2024

Disclaimer

This information note has been prepared by the Institute to assist persons who wish to make a Complaint about the conduct of an Institute Member. This document is not legal advice and is not a substitute for the Scheme. Where there is any conflict or inconsistency between the Scheme and this guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between regulations and this guidance, the regulations shall be followed.

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