

# APM Indicative Sanctions Guidance

## Guidance for the Chief Executive, Assessor and Professional Conduct Committee

### 1. Introduction

- 1.1 This guidance has been developed to assist:
- the Chief Executive in the exercise of their limited powers when dismissing a complaint or issuing a letter of advice;
  - the Assessor in the exercise of their summary powers;
  - the Professional Conduct Committee (the Committee) in considering what sanction, if any, to impose on a Chartered Project Professional (ChPP) or an APM member following a finding of professional misconduct; and
  - the Assessor in exercising their function under the Consensual Disposal procedure.
- 1.2 The Assessor and Committee members are reminded that they are expected to make independent decisions.
- 1.3 Whilst this guidance should be relied upon, including for the purposes of consistency, each case will turn on its own facts and must be decided on its merits. However, where this guidance is departed from, clear reasons should be given.

### 2. Purpose of the sanctions

The primary purpose of sanctions is not to be punitive but to protect the public interest. This includes protecting members of the public, maintaining the integrity of the profession, maintaining the trust and confidence of the public in the profession and to uphold proper standards of conduct and competence.

### 3. Sanctions

- 3.1 The Chief Executive has a limited power, when it is not considered appropriate to dismiss a complaint but not necessary to refer a complaint to the Assessor, to decide to send a letter of advice to a Member/ChPP. In the exercise of that power, the Chief Executive shall have regard to this guidance.
- 3.2 Where the Assessor has determined that there is no material dispute of fact and the matter does not warrant referral to the Committee they may exercise one or more of their summary powers, which include:
- sending a letter of advice;
  - issuing a warning as to future conduct;
  - issuing a reprimand.
- 3.3 The Assessor may instead refer the matter to the Committee for hearing.
- 3.4 The Committee's sanctions include:
- permitting membership and/or registration to continue, subject to special stated conditions (e.g. completing further training or periods of mentoring etc.);
  - issuing a formal warning as to future conduct;
  - issuing a reprimand;
  - suspension from membership and/or registration for a specified period;
  - removal from membership and/or registration.

- 3.5 The Committee may also choose to impose no sanction, notwithstanding that it has made a finding of professional misconduct.
- 3.6 In deciding whether to impose a sanction and (if so) what sanction or combination of sanctions to impose, regard should be had to the public interest considerations present as well as the interests of the member. It will be necessary to consider any mitigation, relative to the nature and seriousness of the behaviour and incident(s) in question.
- 3.7 Proportionality requires the Committee to consider and determine whether a less intrusive measure could be used without unacceptably compromising the objective of protecting the public interest. In considering this and the severity of the consequences for the member, Committees should seek to achieve a fair balance between the rights of the member and the public interest.
- 3.8 It is therefore necessary for the Assessor and Committee, when considering appropriate sanctions, to consider the least serious sanction and to consider whether that is sufficient, and, if not, to go to the next most serious sanction or combination of sanctions and so on, until the appropriate and proportionate sanction is reached. The primary purpose of a sanction is not to be punitive, although inevitably it may be punitive in effect.
- 3.9 In all cases, it is important that the Committee gives clear reasons for its decision. Reasons need not be elaborate or lengthy, but should adequately explain why the decision was reached.
- 3.10 All findings and sanctions will remain permanently on the ChPP's and/or Member's record and if so ordered will be published on APM's website for such period as the Assessor or Committee may decide.

#### 4. Considerations whether a sanction is sufficient

- 4.1 **No sanction** – Where there is a finding of professional misconduct, only in exceptional cases would it be appropriate to impose no sanction. This might include, for instance, if the ChPP and/or Member was significantly incapacitated at the time of the breach, or there was no impact on third parties or the reputation of Chartered Project Professionals or APM. It should be remembered that findings of misconduct may affect an individual's professional reputation, so that there may be some impact upon them if there is no formal sanction imposed. If it is decided to impose no sanction, the Assessor or Committee must give clear and detailed reasons for this decision.
- 4.2 **Letter of Advice** – This is the least severe sanction that can be applied and is open only to the Chief Executive and Assessor. This may be appropriate when most of the following factors are present (this list is not exhaustive):
- the conduct or matter had minimal effect on any other party and/or the public and/or the reputation of the individual and/or Chartered Project Professionals and/or APM;
  - the ChPP and/or Member has fully co-operated with any enquiry by APM and/or the Assessor;
  - the ChPP and/or Member has demonstrated that they have insight into their failings;
  - the ChPP and/or Member has expressed genuine regret and remorse;
  - the ChPP and/or Member has taken possible corrective steps before any enquiry or intervention by APM or any of its representatives;
  - the ChPP and/or member has a previous good disciplinary history with APM (and with any other relevant body so far as is known).
- 4.3 **A reprimand and/or formal warning** – A reprimand is the next most severe sanction. A reprimand is a 'backwards-looking' sanction and represents censure of previous behaviour. 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 Assessor or Committee 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 Chartered Project Professionals or APM. A warning will focus on future conduct of the ChPP and/or Member

and seeks to modify behaviour in a way that promotes the public interest. It may be appropriate for a reprimand and a formal warning to be issued together. The Assessor or Committee should consider carefully whether a reprimand and/or formal warning is sufficient to prevent risk or damage to the public or the professional reputation of Chartered Project Professionals or APM.

**4.4 Permitting registration and/or membership to continue, subject to special stated conditions** – This may be appropriate in cases too serious to warrant just a reprimand and/or formal warning, where the Committee considers there is ongoing risk to the public or where it is considered that a lesser sanction would be insufficient to protect the reputation of Chartered Project Professionals or APM. Factors that may be considered in imposing this sanction might include:

- the individual has demonstrated insight into their conduct and a willingness to respond positively to conditions;
- the individual or a connected person has not benefitted from the breach;
- the behaviour is not necessarily incompatible with continuing to be a project professional;
- there is no evidence of entrenched integrity issues or attitudinal problems;
- the Committee is satisfied that the individual does not pose a significant risk of repeating the same or similar behaviour;
- there are identifiable areas for development;
- the conduct is capable of being rectified and it is possible to formulate relevant and workable conditions which are capable of being monitored by APM.

**4.5 Suspension from membership and/or registration for a specified period** – A suspension order is appropriate for conduct that is serious, but not so serious that complete removal from the register and/or membership is appropriate and justified. A suspension order may be considered when some or all of the following factors are present (but this list is not exhaustive):

- the conduct or offence is so serious that a reprimand or imposition of conditions is deemed insufficient to protect the public interest;
- a protracted period of serious misconduct where a lesser sanction is not sufficient;
- the behaviour is not necessarily incompatible with continuing to be a project professional;
- there is no evidence of entrenched integrity or attitudinal issues;
- the Committee is satisfied that the individual does not pose a significant risk of repeating the same or similar behaviour;
- the conduct is capable of being rectified.

A Chartered Project Professional who is subject to a suspension of registration order may not use the title 'Chartered Project Professional' or 'ChPP' in business or in connection with acting as a project professional (nor refer to him/herself as a Chartered Project Professional) for the duration of the suspension. A Member of APM who is subject to a suspension of membership may not hold themselves out as a Member of APM or use 'MAPM' or 'FAPM' (nor make any reference to their membership or fellowship of APM) for the duration of the suspension.

The decision will specify the period (not exceeding 1 year) for which the suspension is in force.

The period is a matter for the Committee's discretion and judgement, depending on the seriousness of the particular case, and needs careful consideration.

**4.6 Removal from membership and/or registration** – The Committee may remove a person from the Register of Chartered Project Professionals and/or remove a person from membership of APM for conduct and/or an offence that is so serious that only removal from the register and/or membership will protect the public and/or the reputation of the profession. Removal from membership and/or registration may be considered where any of the following factors are present (but this list is not exhaustive):

- dishonesty or a severe lack of integrity;
- sexual misconduct;
- abuse of individuals in a manner that seriously violates their rights;
- sustained or serious bullying or harassment;
- there is a continuing risk of repetition;
- a persistent lack of insight into the seriousness of actions or consequences;
- an inability, unwillingness or refusal to resolve matters;
- evidence of deep-seated attitudinal problems;
- repeated failure to engage with the disciplinary process constructively
- the commission of a serious criminal offence;
- behaviour that is fundamentally incompatible with being a project professional.

A person who is removed from the Register of Chartered Project Professionals may not use the title 'Chartered Project Professional' or 'ChPP' in business or in connection with acting as a project professional (nor refer to him/herself as a Chartered Project Professional). A person who is removed from membership of APM may not hold him/herself out as a member of APM or use 'MAPM' or 'FAPM' (nor any reference to his/her previous membership or fellowship of APM).

## 5. Mitigation

Below is a non-exhaustive list of mitigating factors:

Mitigating Factors
Constructive engagement with the disciplinary process
Isolated incident
Insight into behaviour
Regret and remorse
Previous good character and history of practising as a project professional
Acting under duress
Personal mitigation, such as periods of stress or illness or personal hardship at the time in question
Evidence of steps taken to avoid a recurrence and other rehabilitative steps

Due regard shall be had to any evidence presented in mitigation. This should be weighed appropriately against the nature and seriousness of the conduct, remembering that the primary purposes of the sanction to protect members of the public, to maintain the integrity of the profession, to raise the level of trust and confidence of the public in the profession and to uphold proper standards of conduct and competence.

As with other mitigating factors, references and testimonials will need to be weighed appropriately. The quantity, quality and range of references and testimonials will vary from case to case. Due consideration shall be given to whether the testimonial or reference is from a professional colleague and whether the person giving the testimonial or reference is fully aware of the facts and nature of the matters being considered.

An admission that, in hindsight, an individual should or could have behaved differently and intends to take, or has taken steps to prevent a recurrence of the conduct, may be an important factor.

However, there may be differences in the way that insight is expressed, for example, how an apology or expression of regret is framed and the way it is communicated.

Cultural and language differences may also impact the way an individual engages and, for example, how they express an apology.

## 6. Aggravating factors

Below is a non-exhaustive list of aggravating factors:

Aggravating Factors
Repeated failure to engage with the disciplinary process constructively
Pattern of poor conduct and/or competence and/or regulatory failings, particularly if protracted
Refusal or inability to acknowledge failings
Loss incurred by clients
Lack of insight
Abuse of a position of trust
Previous disciplinary findings or previous use of summary powers
Sexual misconduct
Dishonesty

As well as considering the mitigating features of a case, the Chief Executive, Assessor and/or Committee will need to consider any aggravating features. Particular considerations include:

### Dishonesty

Dishonesty, even where it does not result in direct harm or is related to matters outside of professional practice, can be regarded as serious because it can undermine the trust the public place in the profession.

Accordingly, in relation to any instance of proven dishonesty, there will always be a risk of removal, even in cases of one-off dishonesty, having particular regard to the need to maintain public confidence. Where dishonest conduct is combined with a lack of insight, is persistent or is covered up, nothing short of removal is likely to be appropriate.

However, questions of degree arise and evaluation will always depend on the facts and circumstances of the particular case.

There is a broad spectrum of dishonest conduct, which can take various forms. It encompasses a very wide range of different facts and circumstances.

It is therefore necessary to put into context and assess the seriousness of the dishonesty found proved in a nuanced way. There may be cases where, in light of the particular circumstances, a lesser sanction may suffice and is appropriate, bearing in mind the important balance of the public interest and the interests of the individual.

### Lack of insight

Insight is concerned with future risk of repetition. To this extent, it is to be distinguished from remorse for the past conduct. An individual is likely to be considered to lack insight if they, for example:

- refuse to apologise or accept their mistakes;
- do not recognise that they should have behaved differently;
- promise to remediate, but fail to take appropriate steps;
- do not demonstrate the timely development of insight;
- fail to identify and put in place measures that will prevent a recurrence;
- do not demonstrate an understanding of the impact or potential impact of their actions

The fact that an individual denies wrongdoing does not automatically mean that they lack insight.

Contesting allegations, even robustly, should not be treated of itself as evidence of lack of insight; something more must be shown before a rejected defence can be properly regarded as an aggravating factor.

Similarly, admitting misconduct is not a condition precedent to establishing that an individual understands the gravity of the proven action(s) and is unlikely to repeat it.

It is, therefore, possible to demonstrate remediation and insight without accepting the original wrongdoing, although a person's understanding and attitude towards the underlying allegations is a matter that can properly be taken into account when considering insight.

### **Sexual misconduct**

The misconduct will be particularly serious where the proven actions were sexually motivated or of a sexual nature and/or used or exploited the trust, knowledge or influence derived from the individual's position.

The level of risk to members of the public will be a vital consideration, but it should also be considered that, generally, sexual misconduct will be likely to seriously undermine public trust in the profession.

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