

2021

Enforcement

**Sanctions Guidance**

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## Mission

To contribute to Ireland having a strong regulatory environment in which to do business by supervising and promoting high quality financial reporting, auditing and effective regulation of the accounting profession in the public interest.

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## 1. Introduction

This document is to provide guidance to committees of Investigation/Enquiry when considering the imposition of sanctions on respondents, under section 933(6) or section 934C of the Companies Act 2014 (as amended) ('the Act'). The new procedures governing these investigations and enquiries are set out in S.I. 567 of 2019 - Companies Act 2014 (Procedures Governing the Conduct of Section 933 Enquiries) Regulations 2019 and S.I. 16 of 2020 - Companies Act 2014 (Procedures Governing the Conduct of Section 934 Investigations) Regulations 2020.

This guidance will inform and assist the parties of the approach that committees will take when imposing sanctions. Such guidance will also assist in the approach that will be taken if a settlement agreement is to be reached having regard to the appropriate and proportionate outcome. A settlement procedures document has been produced by the Authority.

This guidance is intended to promote clarity, consistency and transparency in any decision-making. This is a living document and the guidance will be updated and revised as the need arises. The guidance cannot deal with every single situation and exceptions will sometimes arise.

The guidance in this document is advisory in nature and is not intended to be binding. It is for the committee to decide what, if any, sanction to impose given the findings it makes in the case that it has considered. Whilst a committee should always give reasons for its decisions, where it decides to depart from the guidance, it should explain its reasons for doing so.

Nothing in this guidance is intended to be inconsistent with the regulations<sup>1</sup> or any applicable legislation. This guidance should be considered alongside any principles emerging from other relevant cases. Committees may have regard to sanctions imposed in other cases. They must, however, determine the sanction which they think appropriate on the facts and circumstances of the particular case before them.

## 2. Aims and objectives of the Authority

The Irish Auditing & Accounting Supervisory Authority ('IAASA') is the independent body in Ireland with responsibility for the:

- examination and enforcement of certain listed entities' periodic financial reporting;
- oversight of the Recognised Accountancy Bodies' ('RABs') functions in respect of statutory auditors and supervision of the regulatory functions of the Prescribed Accountancy Bodies ('PABs');
- inspection and promotion of improvements in the quality of auditing of Public Interest Entities ('PIEs');
- adopting auditing, ethical and internal quality control standards for auditors; and
- conducting investigations relating to the audit of PIEs and enquiries regarding the PABs' compliance with their approved investigation and disciplinary procedures and the RABs'

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<sup>1</sup> S.I. 567 of 2019 - Companies Act 2014 (Procedures Governing the Conduct of Section 933 Enquiries) Regulations 2019 and S.I. 16 of 2020 - Companies Act 2014 (Procedures Governing the Conduct of Section 934 Investigations) Regulations 2020.

performance of their functions in respect of statutory auditors, as well as on a discretionary basis whether a member of a PAB has complied with that body's standards.

The principal objects of the Authority are set out in Section 904 of the Act. These include to:

- i. supervise how the prescribed accountancy bodies regulate and monitor their members;
- ii. promote adherence to high professional standards in the auditing and accountancy profession;
- iii. monitor whether the financial statements or accounts of certain classes of companies and other undertakings comply with this Act (or, as the case maybe, this Act as applied by the 2019 qualifying partnership regulations) and, where applicable, Article 4 of the IAS Regulation;
- iv. act as a specialist source of advice to the Minister on auditing and accounting matters; and
- v. oversee statutory auditors and the conduct of statutory audits in accordance with the relevant provisions and perform functions under those provisions in relation to such oversight.

The Authority's mission is to contribute to Ireland having a strong regulatory environment in which to do business by supervising and promoting high quality financial reporting, auditing and effective regulation of the accounting profession in the public interest.

This guidance is to assist committees achieve the objectives of IAASA by imposing sanctions which:

- i. improve the behaviour or performance of the PAB, RAB, PAB members such as accountants, statutory auditors or statutory audit firms concerned ('the respondent');
- ii. are tailored to the facts of the particular case and take into account the nature of the breach/contravention and the circumstances of the respondent concerned;
- iii. are proportionate to the nature of the breach/contravention and the harm or potential harm caused;
- iv. eliminate any financial gain or benefit derived as a result of the breach/contravention;
- v. act as a deterrent; and
- vi. ensure procedural compliance to promote improvements in the quality of work of the respondent.

Sanctions are imposed to achieve a number of purposes, namely:

- i. to declare and uphold proper standards of conduct amongst accountants, statutory auditors and statutory audit firms and to maintain and enhance the quality and reliability of work undertaken on future audits;
- ii. to maintain and promote public and market confidence in accountants, statutory auditors and statutory audit firms and the quality of their work such as audits and in the regulation of the accountancy profession;
- iii. to protect the public from accountants, statutory auditors and statutory audit firms whose conduct has fallen short of expected standards;
- iv. to ensure RABs properly undertake their statutory functions in respect of statutory auditors and statutory audit firms;
- v. to ensure proper compliance by the PABs with investigation and disciplinary processes; and
- vi. to deter others from behaving in a similar manner.

### 3. Determining sanction

The purpose of sanction is to protect the public and to maintain confidence in the professions. However, a sanction may have a punitive element<sup>2</sup>. The fact that a sanction may have a punitive effect will not make such a sanction inappropriate where its purpose is to protect the public interest.

The committee should consider whether the sanction or combination of sanctions, financial and/or non-financial, are appropriate and proportionate. There may be circumstances where the objectives can be achieved without a financial penalty.

Committees should consider all the circumstances of each case and the seriousness of the breaches/contraventions involved before determining which sanction or combination of sanctions to impose. Acting proportionately requires the committee to consider all sanctions available to it in ascending order of seriousness. Before finalising its decision on sanction, the committee should satisfy itself that the sanction, or combination of sanctions, it has decided to impose is sufficient and no more than is necessary to achieve the purpose of sanctions.

Sanctions may be imposed individually or in combination. The committee should assess, in the light of all the circumstances of the matter, the appropriateness of the proposed sanctions both individually and in combination. In deciding which sanction or combination of sanctions to impose, committees should have regard to the principle of proportionality. In assessing proportionality, a committee should consider whether a particular sanction is commensurate with the circumstances of the case, including the seriousness of the breach/contravention and the circumstances of the respondent concerned.

The seriousness of the breaches/contraventions found should be determined by reference to a number of factors (the lists below are not exhaustive):

#### 3.1 PABs and RABs

In respect of PABs and RABs (matters that are the subject of section 933 Enquiries):

- i. the nature, seriousness and impact of the non-compliance including:
  - a. the duration and the frequency of the non-compliance;
  - b. whether the non-compliance reveals serious or systemic weaknesses within the relevant body;
  - c. the extent to which the non-compliance departs from the approved investigation and disciplinary procedures or applicable provisions as relevant; and
  - d. the degree of damage done/impact to third parties.
- ii. the conduct of the relevant body after the non-compliance occurred or was identified:
  - a. the degree of co-operation with the Authority;
  - b. any remedial steps (whether taken promptly or otherwise) taken since the non-compliance was identified, and

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<sup>2</sup> The Law Society of Ireland v Tobin, [2017] IECA 215; “the sanctions available to the trial judge ... serve the dual purpose. There is a punitive element as well as the necessary protection of the public and its confidence in the solicitors’ profession, and the upholding of the integrity and good name of the profession.”

- c. the likelihood that the same type of non-compliance will recur if no sanction is imposed;
- iii. the previous record of the relevant body; and
- iv. any other relevant considerations.

## 3.2 Specified persons

In respect of specified persons (matters that are the subject of section 934 Investigations) section 934D of the Act states that the Authority shall consider the following circumstances:

- i. the gravity and duration of the relevant contravention;
- ii. the degree of responsibility of the specified person;
- iii. the financial strength of the specified person (including, in the case of a specified person who is not an individual, the total turnover of the specified person or, in the case of a specified person who is an individual, the annual income of the individual);
- iv. the amount of profits gained or losses avoided by the specified person in consequence of the relevant contravention, in so far as they can be determined;
- v. the level of cooperation of the specified person with the Supervisory Authority;
- vi. previous relevant contraventions committed by the specified person.

## 4. Available sanctions

The sanctions available to committees are set out in the Companies Act 2014 (as amended):

### 4.1 Section 933 Enquiries

Section 933(6)(b):

*Subject to section 941(4) and (4A), the Supervisory Authority may advise, or admonish, the relevant body or may censure it by doing one or more of the following:*

- (i) annulling all or part of a decision of that body relating to the matter that was the subject of the enquiry;*
- (ii) directing that body to conduct an investigation or a fresh investigation into the matter;*
- (iii) directing that body to perform the function that was the subject of the enquiry again in accordance with any directions or terms and conditions that the Supervisory Authority considers appropriate;*
- (iv) directing that body, where it in future performs the function that was the subject of the enquiry, to do so in accordance with any directions or terms and conditions that the Supervisory Authority considers appropriate;*
- (v) requiring that body to pay to the Supervisory Authority an amount not exceeding the greater of the following:*
  - (I) €125,000;*
  - (II) the amount prescribed under section 943(1)(e).*



## 4.2 Section 934 Investigations

### Section 934C(2)

*Subject to section 934D, the Supervisory Authority may impose on the specified person one or more of the following sanctions in relation to the relevant contravention:*

*(a) a direction by the Supervisory Authority to the specified person that he or she cease the conduct giving rise (whether in whole or in part) to the contravention and to abstain from any repetition of that conduct;*

*(b) a direction by the Supervisory Authority to the specified person to remediate the conduct giving rise (whether in whole or in part) to the contravention;*

*(c) a reprimand or severe reprimand by the Supervisory Authority to the specified person in relation to the conduct giving rise (whether in whole or in part) to the contravention;*

*(d) a declaration by the Supervisory Authority that the statutory auditors' report concerned does not meet the requirements of section 336 or 337 or, where applicable, Article 10 of Regulation (EU) No 537/2014;*

*(e) a direction by the Supervisory Authority to the specified person (being any one or more of a statutory auditor or key audit partner (within the meaning of Part 27)) prohibiting him or her, for the period specified in the direction (which may be up to and including an indefinite period), from carrying out statutory audits or signing statutory auditors' reports, or both;*

*(f) if the specified person is an audit firm, a direction by the Supervisory Authority to the firm, or to an officer, member or partner of the firm, or to both, prohibiting the firm or, as the case may be, the officer, member or partner, for the period specified in the direction (which may be up to and including an indefinite period) from performing functions—*

*(i) in the case of the firm, as an audit firm, or*

*(ii) in the case of the officer, member or partner, in audit firms or public-interest entities;*

*(g) subject to section 934G, a direction by the Supervisory Authority to the specified person to pay an amount, as specified in the direction but not exceeding—*

*(i) €100,000 in the case of a specified person who is an individual, or*

*(ii) in the case of a specified person which is an audit firm, €100,000 multiplied by the number of statutory auditors in the firm at the time that the relevant contravention occurred (and irrespective of whether any particular statutory auditor was or was not a party to the relevant contravention),*

*to the Supervisory Authority;*

*(h) an order excluding the specified person from having his or her particulars entered, or continuing to be entered, in the public register (within the meaning of Part 27) in respect of one or more recognised accountancy bodies.*

In respect of specified persons who would come under section 934(8) of the Act the Authority may impose on the person such sanction to which the person is liable under the approved constitution and byelaws of the PAB of which the person is a member (including a monetary sanction) as the

Supervisory Authority considers appropriate after having regard to the circumstances referred to in section 934D(2).

## 5. Provision to settle by way of agreement

The Act provides for the possibility of matters concluding via settlement agreement. The Authority's guidance in relation to its approach to settlement is set out [here](#). A settlement agreement will only be concluded where it is consistent with the objectives of the Authority, and:

- i. the basis for settlement is consistent with the general approach of the Authority to regulation;
- ii. it is fair having regard to all the known facts; and
- iii. the settlement agreement will contribute to the efficient, effective and economic use of resources.

## 6. General approach to imposing sanctions

In determining the sanction to be imposed in a particular case the committee shall:

- i. take into account the circumstances referred to in section 934D;
- ii. identify the sanction or combination of sanctions that the committee considers potentially appropriate having regard to the breach/contravention identified;
- iii. consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level, nature or combination of sanctions under consideration;
- iv. consider any further adjustment necessary to achieve the appropriate deterrent effect;
- v. consider whether a discount for admissions or early disposal is appropriate.

## 7. Committees of Enquiry

A Committee of Enquiry considers whether a relevant body has complied with its approved investigation and disciplinary procedures or where applicable the relevant body has complied with its applicable provisions in performing the Part 27 functions.

### 7.1 Options available to the committee

The available options open to a committee are as set out in section 933(6) of the Act:

- i. Advise, admonish or censure

The terms 'advise', 'admonish' or 'censure' are not defined in law but are generally held to be in ascending order of severity. A committee may consider advising a relevant body where there has been a clear misunderstanding of a power/regulation and there has been full and frank engagement with the Authority.

An admonishment may be appropriate where:

- a. The relevant body has made every effort to correct a matter as soon as it was brought to its attention.

- b. The matter was a single incident and it is unlikely to be repeated.
- c. The relevant body has sought where possible to remedy the matter.

Censure whilst not defined may be used when a committee considers that an admonishment is not proportionate in all the circumstances of the case.

- ii. annulling all or part of a decision of that body relating to the matter that was the subject of the enquiry;

The committee may consider annulling all or part of a decision where there has been a material error of fact or law or the decision is unfair because of a serious procedural irregularity or the decision is irrational.

- iii. directing that body to conduct an investigation or a fresh investigation into the matter

The committee may wish to consider such a course of action where:

- a. the evidence was not assessed in whole or in part or the decision is irrational.
- b. the breach led to unfairness in the process or missed an important step of the process etc. (e.g. a failure to give a right of independent review)
- iv. directing that body to perform the function that was the subject of the enquiry again in accordance with any directions or terms and conditions that the Supervisory Authority considers appropriate; and
- v. directing that body, where it in future performs the function that was the subject of the enquiry, to do so in accordance with any directions or terms and conditions that the Supervisory Authority considers appropriate;

In considering the above directions the committee will need to consider the facts and surrounding circumstances of the case and any direction or conditions should be specific, practical and achievable.

- vi. requiring that body to pay to the Supervisory Authority an amount not exceeding the greater of the following:
  - a. €125,000; or
  - b. the amount prescribed under section 943(1)(e).

In respect of the general principles relating to the payment of financial penalties the committee should consider where relevant the factors set out below in paragraph 8.1.

## 8. Committees of Investigation

### 8.1 General guiding principles

In assessing the nature and seriousness of the contravention and in determining which sanction(s) may be appropriate, the committee shall consider the circumstances of section 934D. In doing so the following factors may assist in that consideration. The list below is not exhaustive and not all factors will be applicable in a particular case. Once the committee has identified all the factors that it considers relevant, it should then decide the relative weight to be given to each of those factors.

- i. the gravity and duration of the relevant contravention:

- a. the nature, extent and importance of the contravention;
  - b. whether the contravention was intentional or unintentional;
  - c. whether the contravention was dishonest, deliberate or reckless;
  - d. whether the contravention adversely affected, or potentially adversely affected, a significant number of people in Ireland, the public, investors or other market users, consumers, clients, employees, pensioners or creditors);
  - e. whether the breach could harm investor, market and public confidence in the truth and fairness of the financial statements published by statutory auditors or statutory audit firms;
  - f. whether the contravention could undermine confidence in the standards of conduct in general of statutory auditors and statutory audit firms, and/or in statutory audit in European Union member states;
  - g. whether the contravention was isolated, or repeated or ongoing;
  - h. if repeated or ongoing, the length of time over which the contraventions occurred;
  - i. previous contraventions by the statutory auditor or statutory audit firm;
- ii. the degree of responsibility of the specified person:
- a. in the case of a statutory audit firm, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of the International Standard on Quality Control 1 ("ISQC 1") (or its equivalent);
  - b. in the case of a statutory audit firm, when the statutory audit firm's senior management became aware of the contravention and what action was taken at that point; and
  - c. in respect of an individual, the position or role of that person and degree of responsibility/seniority;
- iii. the financial strength of the specified person (including, in the case of a specified person who is not an individual, the total turnover of the specified person or, in the case of a specified person who is an individual, the annual income of the individual);
- The specified person's ability to pay any financial award should be proportionate and take into account matters such as total turnover of the specified person (if it is a firm) and the individuals annual income derived from audit related activity rather than annual income unrelated to the specified individuals role in audit matters.
- iv. the amount of profits gained or losses avoided by the specified person in consequence of the relevant contravention, in so far as they can be determined;
- the financial benefit derived or intended to be derived from the contravention (the amounts of the profits gained or losses avoided by the respondent, in so far as they can be determined). This may include any loss avoided or intended to be avoided where it is practicable to quantify this (for example, this could be quantified in appropriate cases by the fees received by the statutory auditor or statutory audit firm, or by performance related pay, bonuses, or share options received by the statutory auditor).
- v. the level of cooperation of the specified person with the Supervisory Authority;
- any remedial steps (whether taken promptly or otherwise) taken since the contraventions(s) were identified;
- degree of insight into the contravention;

full engagement with the Authority in providing documentation/evidence in a timely manner;

- vi. previous relevant contraventions committed by the specified person; and

The previous history of the statutory auditor or audit firm (whether previous sanctions have been imposed by another regulator or other authority in respect of any contravention)

## **8.2 A direction to cease or abstain from conduct**

The committee may require a respondent to cease and/or abstain from conduct where it considers, in its absolute discretion, such a direction would be appropriate. This sanction is intended to be used where the circumstances suggest that a contravention is ongoing or there is a real risk of repetition of conduct and the public interest would be best served by for example, implementing organisational or administrative arrangements that would bring to an immediate end, or avoid a repetition of, the contravention.

This sanction may be used alone, when other sanctions available are not considered to be proportionate to a finding of a contravention taking into consideration all the circumstances such as significant mitigating circumstances.

This sanction may also be used in conjunction with other sanctions in the committees' absolute discretion. Depending on the circumstances of the case the committee may wish to consider if such a direction should be accompanied by a sanction of reprimand or severe reprimand.

## **8.3 A direction to remediate**

This sanction is intended to be used where the circumstances suggest that a contravention is capable of being remedied.

A direction to remedy the contravention is intended to be used where there are ongoing adverse effects of the conduct and specific, measurable, achievable and realistic steps can be identified which would or might mitigate these effects.

This sanction may be used alone, when other sanctions available are not considered to be proportionate to a finding of a contravention taking into consideration all the circumstances such as significant mitigating circumstances.

This sanction may also be used in conjunction with other sanctions in the committees' absolute discretion. Depending on the circumstances of the case the committee may wish to consider if such a direction should be accompanied by a sanction of reprimand or severe reprimand. The committee should specify timelines for compliance.

## **8.4 A reprimand/severe reprimand**

A reprimand may be appropriate in cases where conduct is considered less serious, but the committee wishes to make clear that the behaviour was unacceptable. The committee should consider whether:

- i. the conduct was not a deliberate disregard of professional obligations;
- ii. the period over which the contraventions took place was short and it was stopped as soon as possible;
- iii. there was an early admission and a genuine acceptance of the contravention.

A reprimand may be considered appropriate in cases where there is no significant risk or damage to the public interest.

A severe reprimand may be appropriate where the contravention is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the committee that there is no continuing risk to the public, and there is evidence and an appreciation of the matters found proved. This sanction may be appropriate where most of the following factors are present:

- i. the contravention was not intentional and is no longer continuing, though the specified person may have acted recklessly;
- ii. evidence that the contravention would not have caused direct or indirect harm;
- iii. insight into the contraventions identified;
- iv. genuine expression of regret/apologies; and
- v. previous good record.

## **8.5 A declaration that the audit report does not meet statutory requirements**

A committee may make a finding that an audit report (or reports) does/do not meet the requirements of section 336 or 337 of the Companies Act 2014 (as amended) or where applicable, Article 10 of Regulation (EU) No 537/2014.

## **8.6 A direction to pay a specified sum to the Authority**

A direction to pay a specified sum may be made either alone or in combination with one or more other sanctions. It will normally be in the public interest where a contravention is found to warrant the imposition of a financial penalty to be accompanied by some degree of censure. The committee should not direct the payment of a specified sum in isolation (i.e. without any other sanction) unless it has satisfied itself that that is the appropriate course. It should provide reasons for that decision.

In order to determine whether such a direction is appropriate the following factors should be considered:

- i. whether a deterrence can be achieved by publication of a public statement alone (or with a direction to cease or abstain);
- ii. whether the statutory auditor or statutory audit firm has derived any financial gain or benefit (including avoidance of loss) as a result of the contravention;
- iii. whether the contravention involved, caused or risked the loss of significant sums of money;

Any financial penalty imposed should be proportionate to the contravention and all the circumstances of the case. The committee should consider that it will act as an effective deterrent and it will promote

public confidence in the regulation of statutory audit and in the way in which contraventions are addressed.

In considering the appropriate level of the sum to be paid the committee shall take into account all relevant circumstances of the case.

## **8.7 A restriction on the statutory auditor's/audit firm's authority to carry out statutory audits.**

A committee may issue:

- i. a direction that the statutory auditor and/or key audit partner be prohibited for a specified period (which may be up to and including an indefinite period) from carrying out statutory audits or signing statutory auditors reports or both;
- ii. a direction (if the specified person is an audit firm) to the firm or to an officer, member or partner of the firm or both prohibiting the firm, officer, member or partner for a specified period (which may be up to and including an indefinite period) from performing functions as an audit firm or if an officer member or partner, in audit firms or public interest entities; and/or
- iii. an order excluding the specified person from having his or her particulars entered or continuing to be entered, in the public register (within the meaning of Part 27) in respect of one or more RABs.

These sanctions are intended to be used where the circumstances suggest that the public interest would be best served by the prohibition of the specified person for a defined period of time from carrying out statutory audits or signing statutory audit reports or performing the functions of an audit firm.

The ability to prohibit a statutory auditor or statutory audit firm, from carrying out statutory audits and/or signing audit reports, or to prohibit members of a statutory audit firm from exercising functions in audit firms or public interest entities, or to exclude a statutory auditor from membership with one or more RABs, exists because certain contraventions are so damaging to the wider public and market confidence in the standards of conduct of statutory auditors and the quality of statutory audit in European Union member states, that removal of the statutory auditor's statutory audit role and/or professional status is the appropriate outcome in order to protect the public or otherwise safeguard the public interest.

Exclusion may be appropriate when the conduct involves any or all of the following circumstances:

- i. serious departure from relevant professional standards, such as repeated defective work;
- ii. actual loss or adverse impact on client and/or members of the public;
- iii. abuse of trust/position;
- iv. dishonesty or lack of integrity;
- v. lack of understanding and insight into the seriousness of the acts/omissions and the consequences thereof;
- vi. conduct continued over a period of time; and/or
- vii. affected or had the potential to affect a substantial number of clients/ members of the public.

Prior to imposing an order excluding a statutory auditor from membership of a Recognised Accountancy Body, all other available sanctions should be considered to ensure that the prohibition or exclusion is the most appropriate sanction (either on its own or in conjunction with another sanction or sanctions) and is proportionate taking into account all the circumstances of the case.

An order excluding the specified person from having his or her particulars entered or continuing to be entered, in the public register (within the meaning of Part 27) in respect of one or more RABs, may be considered where for example, the statutory auditor has been found to have been dishonest.





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