

Disciplinary Sanctions

EFFECTIVE FROM JUNE 2021

Where a member commits a breach of the Professional Conduct Regulations (PCR) or the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR) for which ICB has irrefutable evidence, ICB shall invoke a Fine, Penalty or Sanction or any combination of these. These actions shall be in relation to a set group of breaches and such fines, penalties and sanctions are laid out here.

Where a member or practice is accused of a breach that does not appear here, but where the member or practice is being accused by ICB or another ICB member or by some third-party person or business or body, ICB shall have recourse to a Disciplinary Hearing as detailed separately.

FINES, PENALTIES AND SANCTIONS

ICB will impose sanctions, including a financial penalty, upon members who do not comply with the PCR or MLR. In more serious cases, ICB will additionally consider suspension of membership or expulsion. If criminal activity is suspected, ICB will inform the relevant authorities.

A member will be protected from sanctions and penalties if they can demonstrate that they have followed ICB guidance. When assessing the level of sanctions, fines or penalties to be imposed, ICB will consider the manner in which it became aware of the non-compliance.

The fines imposed and implemented are designed 'to ensure that contravention of a relevant requirement by a member renders the member liable to effective, proportionate and dissuasive disciplinary measures'. (OPBAS Sourcebook)

DISCLOSURE OF NON-COMPLIANCE

Unprompted disclosure: Where a member informs ICB of a breach of the regulations before they have reason to believe that ICB either knows, or is about to discover it, this shall be deemed to be an unprompted disclosure.

Prompted disclosure: Where ICB discovers a breach of the regulations before a member has made an unprompted disclosure but where the member fully and openly admits the breach immediately when questioned, this shall be deemed to be a prompted disclosure.

Deliberate breach or concealment: Where a member is found to have deliberately set out to deceive, or tries to conceal the truth. This shall be regarded as a very serious breach.

FAILURE TO REGISTER

With effect from the passing of the MLR any person or business deemed to be an accountancy service provider has been required to be approved by an appointed anti-money laundering (AML) Supervisory Authority. For the benefit of doubt; any person or practice offering a bookkeeping, accounting or payroll service by way of business, is deemed to be an accounting service provider whether that service is provided for reward or voluntarily, and regardless of whether that service constitutes the whole or a part of the business of that person or practice. ICB is listed under Schedule 1 of the MLR as a Supervisory Authority and as such is mandated to approve its members to practice.

In order to discharge their obligations under the MLR and PCR all members who are eligible and who meet the criteria must apply for a Practice Licence before they commence trading and before they commence efforts to attract clients or to offer advice, whether for reward or voluntarily.

Whilst failure to register a practice at the correct time does not in itself indicate that the practice has been exposed to or involved in money laundering or other criminal activity, it is likely to indicate weaknesses in the controls of the practice. In ICB's experience, it is also an indication that the practice might be failing in other areas and that there is a culture of non-compliance.

Late registration penalties

Failure to register a practice in a timely and efficient manner is a breach of regulation 6 of the PCR and is likely also to breach Regulation 56 of the MLR.

Unprompted disclosure - £100.00 fixed penalty plus backdated fees to January 2009 or the date of the commencement of the practice, whichever is more recent, to cover any period of trading whilst unlicensed. If the practice is unable to provide satisfactory evidence of the actual date of commencement, ICB shall impose a date based on evidence available to it

Prompted disclosure - £150.00 fixed penalty plus backdated fees as above

Deliberate failure to disclose - £300.00 fixed penalty plus backdated fees as above

FAILURE TO INFORM ICB OF CHANGES TO THE PRACTICE

To enable ICB to discharge its duties as a Supervisor, it requires up-to-date, accurate information about members and practices. A member or practice must provide all information as requested by ICB and update any changes as soon as is practical but not longer than fourteen days after any change has taken place. Failure to provide full information that is accurate and truthful is a breach of PCR Regulation 21 and could be deemed also to be a breach of Regulation 57 of the MLR.

Should ICB identify any further breaches, penalties for these will be calculated separately and in addition to the late registration penalty.

Changes that must be reported to ICB include, but shall not be limited to, the following;

- Change of entity (such as from sole trader to limited liability company)
- Change of trading name
- Change of address and/or contact details
- Addition or removal of a Beneficial Owner, Officer or Manager (BOOM)
- Addition or removal of a member of staff, including temporary or contract staff
- Addition or removal of a subcontractor
- Any other material changes to the practice
- Any person within the practice being subject to a criminal investigation or conviction
- Any person within the practice being subject to any disciplinary action or sanction
- The practice becoming or ceasing to be a Trust and Company Service Provider (TCSP)

Unprompted disclosure - £100 fixed penalty for each failure

Prompted disclosure - £150 fixed penalty for each failure

Deliberate breach or concealment - £300 fixed penalty for each failure

AML COMPLIANCE INSPECTIONS

The AML Compliance Directorate shall carry out on-going inspections of practices across the full membership on a risk-based approach or following intelligence or suspicions that a breach has occurred. ICB may also select practices for inspection at random.

Member Review

The purpose of the Member Review is to check the accuracy of the information held by ICB and where breaches are identified ICB shall take appropriate action, which might include an immediate fine or penalty or the practice might be selected for inspection either virtually or as an on-site inspection. ICB shall use all available sources of information.

Inspections

ICB will carry out virtual and on-site inspections on a risk-based approach or when prompted by a Member Review.

When ICB advises a practice that it is to be inspected, the practice must co-operate fully with the inspector. The practice must make available such documentation as is requested either before, during or after the visit, and make staff available for interview. Uncooperative behaviour will be considered when determining what fines, sanctions or other actions are taken. At the end of the inspection, the inspector will discuss their findings and will normally indicate that the practice has been found either:

- Compliant
- Non-compliant

Compliant – means that the practice has a culture of compliance and has in place such policies and systems that enable it to properly assess risk and carry out robust due diligence. The practice will be able to demonstrate that it has a thorough awareness and understanding of the requirements of the MLR and understands what it is doing and why. It will be able to demonstrate that it has correctly assessed risk on its clients and carried out robust due diligence. Where staff are employed, they are competent and demonstrate a thorough understanding of AML compliance.

It should be noted that, where a practice carries out remedial actions such as updating risk assessments and due diligence, or carries out annual monitoring of its clients, only after being selected for inspection, the practice will be judged on the status of its records at the time of notification. Any such 'catching up' will be regarded as prompted.

Non-compliant - means that the practice has failed to introduce sufficient systems for assessing risk and carrying out due diligence resulting in breaches of the regulations.

It should be noted that, where a practice carries out remedial actions such as updating risk assessments and due diligence, or carries out annual monitoring of its clients, only after to being selected for inspection, the practice will be judged on the status of its records at the time of notification. Any such 'catching up' will be regarded as prompted and the overall finding will be as Non-Compliant.

FINES FOR NON-COMPLIANCE

The following list of breaches form the basis of the reasons why a practice will be judged as non-compliant. This checklist will be used by the inspector to judge how many and how serious the breaches are and how able the practice is to remedy the breaches in a timely and effective manner. The inspector shall also judge whether the practice demonstrates a proper understanding of the failures and can be relied upon to follow a proposed course of action that will take the practice to the point where it can be judged to be compliant.

Whilst members must adhere to the MLR in full, the following failures will be used by the inspector as the basis to decide the level of compliance of the practice:

- **Breach of Regulation 18**-Failure to have written practice AML risk assessment or risk management processes in place. £200
- **Breach of Regulation 19**-Failure to establish, monitor and manage the required risk-based policies, controls and procedures. £200
- **Breach of Regulation 21-23** -Failure to implement sufficient Internal Controls. £200-400
- **Breach of Regulation 24**-Failure to take appropriate measures to provide the required assessment and training of self or staff and keep records. £200-400.
- **Breach of Regulation 26**-Failure to obtain supervisory body approval for any BOOM within the practice. £350 per BOOM
- **Breach of Regulation 27 and 28**-Failure to apply appropriate and risk-sensitive customer due diligence measures and ongoing monitoring of a business relationship. £100 per client.
- **Breach of Regulation 30** -Failure to comply with the requirements on timing of verification of identity of clients and any beneficial owner. £200
- **Breach of Regulation 31** – Failure to cease a transaction/business relationship where unable to apply customer due diligence measures. £100 per client
- **Breach of Regulation 33**-Failure to apply enhanced customer due diligence and ongoing monitoring where required. £200
- **Breach of Regulation 35** – Failure to have in place appropriate risk-management systems for identifying Politically Exposed Persons and failure to continue EDD when person ceases to be a PEP. £200-400
- **Breach of Regulation 39** – Failure to apply correct procedure when relying on third party CDD. £200
- **Breach of Regulation 40**-Failure to keep the required records. £200
- **Breach of Regulation 41** – Failure to notify clients that personal data will be processed only for purposes of preventing money laundering or terrorist financing. £200
- **Breach of Regulation 56**-Failure to comply with the registration requirements relating to TCSP services. £350

Non-compliant – starting fine of £450 plus additional fines for each breach

FINES FOR BREACHES OF THE PCR

Breach of the PCR will not result in a member being judged as non-compliant for AML but will result in disciplinary measures. Breaches of the PCR will often be uncovered while the member undergoes an AML inspection but at times ICB will become aware of a PCR breach which may trigger an AML Inspection.

- Failure to provide ICB with a copy of photo ID. £100
- Failure to inform ICB of Criminal offence of owner or any staff member. Minimum fine £200. May result in expulsion
- Failure to inform ICB of schedule 3 criminal offence conviction. Minimum fine £200 plus expulsion
- Failure to inform ICB of being disqualified as a company director. Minimum fine £200 may result in expulsion
- Failure to inform ICB of being excluded by another professional body. Minimum fine £200 plus expulsion
- Failure to inform ICB of being disciplined by another professional body. Minimum fine £200. May result in expulsion
- Failure to inform ICB of being made bankrupt or subject to voluntary arrangements with creditors. Minimum fine £200. May result in expulsion
- Evading AML inspection/disciplinary meetings. Starting fine in line with non-compliance (£450) plus any breaches found on desktop review
- Member holding client funds without prior ICB Clearance. Minimum fine £200
- Member giving estate planning advice without prior ICB clearance. Minimum fine £200
- Member providing investment services without prior ICB clearance. Minimum fine £200
- Member not holding sufficient Professional Indemnity Insurance (at least £50k). Minimum fine £200
- Member undertaking work outside their qualifications or expertise. Minimum fine £350
- Member describing themselves in a misleading fashion (e.g. a grade they are not entitled). Minimum fine £350
- Failure to annually review and update the practice policies, controls and procedures. £200
- Clients not recorded or not reviewed annually on AMLOnline. £25 per client
- Failure to resign membership or practice licence. Minimum fine £500

COSTS

In addition to fines, penalties, and sanctions, ICB may levy costs

OUTCOME

ICB will decide for what length of time a disciplinary sanction will remain live on a member's record. If the member is suspended or expelled ICB will decide for what period the sanction will be imposed and for how long it will remain on a member's record. Where a member is suspended, ICB will decide what period should have elapsed before the member is eligible to reapply.

Any member subject to, or whose practice is subject to, disciplinary action will lose their status as a Member of Good Standing. This status will be reinstated once all fines are paid and any probationary period, if applied, is spent.

PUBLIC DUTY

In order to discharge its public duty as a professional body and Supervisory Authority under Schedule 1 of the MLR, ICB may publish details on its website and in its newsletter of sanctions imposed by ICB on members and practices for any breach.

APPEALS

Any ICB member subject to disciplinary action has the right to appeal. Appeals must be made in writing via email to professional.standards@bookkeepers.org.uk within 21 days of the disciplinary notice being sent. Appeals will only be considered on the following basis:

- where there is new evidence that was not available at the time of the inspection
- where there was a procedural flaw in the conduct of the inspection process that materially affected ICB's ability to reach a fair decision.

The member must provide full reasons for the appeal and comprehensive supporting evidence.

The Appeals Panel meets once a month to review all appeals that have been received. The outcome of the review will be communicated to the member within seven days of the meeting.