

# Disciplinary Sanctions

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EFFECTIVE UNTIL MAY 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:

- Encourage compliance
- Deter non-compliance
- Be proportionate to the non-compliance

The action taken and the amount of penalty imposed will consider:

- Reasons for non-compliance
- Seriousness of non-compliance
- Whether non-compliance was deliberate, reckless, or unintended
- Benefit derived from the non-compliance
- Exposure to money laundering or other criminal activity because of the non-compliance
- Co-operation with ICB
- Compliance history of member or practice
- Size of practice
- Criminality of the member

## 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** - £200.00 fixed penalty plus backdated fees as above

**Deliberate failure to disclose** - £500.00 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 18 and could be deemed also to be a breach of Regulation 57 of the MLR.

The manner in which a member co-operates with ICB and makes efforts to rectify the breach, will be taken into account. Failure to co-operate or unreasonable behaviour is a breach of ICB PCR Regulation 18 and could be deemed also to be a breach of Regulation 57 of the MLR and could lead to more significant penalties or the imposition of sanctions.

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** - £100.00 fixed penalty for each failure

**Prompted disclosure** - £200.00 fixed penalty for each failure

**Deliberate breach or concealment** - £500.00 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-sensitive basis or following intelligence or suspicions that a breach has occurred. ICB may also select practices for inspection at random.

## **Desk-based inspections**

The purpose of the desk-based inspections 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 by telephone or as an on-site inspection. ICB shall use all available sources of information.

## **Inspections**

ICB will carry out on-site inspections on a risk-sensitive basis or when prompted by a desk-based inspection.

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
- Generally 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.

**Generally compliant** – means that a practice has a general awareness and understanding of the requirements of AML but has failed to fully carry out its obligations. This could be a lack of proper understanding or assessment of risk, a failure to carry out robust due diligence on a small number of its clients, or that the practice demonstrates a less than adequate understanding of the importance of robust AML policies and procedures.

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.

**Non-compliant** - means that the practice has failed either wholly or substantially to introduce systems for assessing risk and carrying out due diligence. The practice will have shown a blatant disregard for the need for a robust AML system and will fail to demonstrate to the inspector that an atmosphere of compliance exists within the practice.

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.

## 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. £500
- **Breach of Regulation 19-** Failure to establish, monitor and manage the required risk-based policies, controls and procedures. £500
- **Breach of Regulation 21-23-** Failure to implement sufficient Internal Controls. £500
- **Breach of Regulation 24-** Failure to take appropriate measures to provide the required assessment and training of self or staff and keep records. £50 per staff member
- **Breach of Regulation 26-** Failure to obtain supervisory body approval for any BOOM within the practice. £500 per BOOM
- **Breach of Regulation 27-** Failure to apply appropriate and risk-sensitive customer due diligence measures and ongoing monitoring of a business relationship. £500
- **Breach of Regulation 28-** Failure to apply appropriate and risk-sensitive ongoing monitoring of a business relationship. £500
- **Breach of Regulation 30 and 31-** Failure to comply with the requirements on timing of verification of identity of clients and any beneficial owner or by continuing with transaction/business relationship where unable to apply customer due diligence measures. £1000
- **Breach of Regulation 33-** Failure to apply enhanced customer due diligence and ongoing monitoring where required. £100
- **Breach of Regulation 40-** Failure to keep the required records. £500
- **Breach of Regulation 56-** Failure to comply with the registration requirements relating to TCSP services. £500

**Generally compliant** – starting fine of £200 plus an additional fee equivalent to £20 per client, plus additional fines for each breach

**Non-compliant** – starting fine of £2,000 plus an additional fine equivalent to £100 per client, plus additional fines for each breach

## **COSTS**

In addition to fines, penalties, and sanctions, ICB will 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.

## **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.

## **MITIGATION**

A member or practice wishing to appeal against the level of sanction imposed by ICB must write to the ICB Independent Disciplinary Fairness Panel providing their full reasons for their appeal and providing comprehensive supporting evidence to enable the Panel to make a judgement. When determining if the level of sanction imposed is fair and proportionate the Panel will consider mitigating circumstances which shall include but not be limited to willingness to accept and introduce remedial actions, ill health, previous record and other factors the member may wish to be taken into account.