

## Indicative Outcomes Guidance

### Sentencing Powers of the Tribunal

The Tribunal can:

a. **Censure.**

A Censure is similar to an admonition and marks the Tribunal's disapproval of the Respondent's conduct but the Respondent's status remains unaffected and he is not restricted or controlled in any way.

A Censure may be an appropriate sanction to impose where most or all of the following indicative factors are present.

- the matter is a one off isolated incident
- there has been an early plea of guilty
- the respondent is remorseful and shows insight
- the respondent has cooperated fully with the Fiscal and the Tribunal
- no repetition of the matter since the incident occurred
- evidence of good character and no previous problems
- no risk to the public
- no requirement for supervision
- misconduct at the lower end of the scale
- evidence that rehabilitative/corrective steps have been taken
- relevant and appropriate references and testimonials
- minimum impact on the victim
- not deliberate or premeditated

b. **Fine** (except in connection with a conviction of dishonesty or conviction where fined an amount equivalent to level 4 on the standard scale or more or sentenced to imprisonment for a term of 12 months or more) (S53(1)(b) cases).

c. **Fine and Censure**

In addition to a Censure, the Tribunal may also impose a fine of up to £10,000. The amount of fine will to some extent depend on the respondent's ability to pay and fines are payable to the Scottish Courts Service. Where the respondent has limited funds, priority should be given to any award of compensation rather than the imposition of a fine.

A fine in addition to a Censure may be an appropriate sanction to impose where most or all of the following indicative factors are present.

It is usual to impose a Censure where a fine is imposed

- no requirement for supervision
- no risk to the public if allowed to continue with a full practising certificate
- misconduct – lower to middle end of the scale
- fine in addition to Censure required to show the seriousness with which the Tribunal views the respondent's conduct.
- level of fine will vary according to how seriously the conduct is likely to damage the reputation of the legal profession
- level of fine – also take into account the list of aggravating and mitigating factors and ability to pay.

d. **Fine/Censure together with a Restriction on the Respondent's Practising Certificate –**

A Restriction on a practising certificate means that the Tribunal can impose whatever restrictions they think fit. The conditions need to be sufficiently specific, realistic and achievable. The normal restriction is that the respondent can only work under the supervision of an employer approved by the Law Society.

A Restriction may be an appropriate sanction to impose where most or all of the following indicative factors are present:

- the respondent may be a danger to the public should he continue to work with a full practising certificate
- there are areas of the respondent's practice that require review, retraining and supervision
- the public will not be at risk if the solicitor is working under supervision
- misconduct at the middle of the scale of misconduct
- length of restriction – take into account the aggravating and mitigating factors
- can also impose a Fine in addition to a Censure and Restriction – this may be appropriate if the Tribunal wishes to show that it views the misconduct very seriously

e. **Suspension**

For a period of up to 10 years – this involves the suspension of the solicitor's practising certificate for whatever period the Tribunal thinks fit. This would mean that the solicitor cannot work as a solicitor for that period of time but will be able to apply to the Law Society for a full practising certificate at the end of the period of the suspension.

A suspension may be an appropriate sanction to impose where most or all of the following indicative factors are present:

- misconduct at the middle to serious end of the scale
- the solicitor is likely to be a danger to the public even if working under supervision
- there may be an element of dishonesty involved
- the respondent's conduct, Conviction or incompetence may be incompatible with him being a solicitor
- public confidence in solicitors would be undermined if the solicitor was not suspended
- some aggravating factors present

f. **Striking off the Roll** – which is permanent.

This means that the solicitor's name is struck from the Roll of Solicitors for all time. There is provision in the Rules for an application to be made to the Tribunal for restoration to the Roll but this seldom happens and very few applications have been granted in the past. This is the most serious sanction the Tribunal can impose.

A Strike Off may be an appropriate sanction to consider where most or all of the following indicative factors are present:

- the solicitor has been involved in dishonesty or other criminal behaviour
- lack of remorse and insight
- ongoing course of conduct over a long period of time
- conduct which would be a danger to the public
- conduct which is likely to seriously damage the reputation of the legal profession
- the respondent's conduct shows that he is not a fit person to be a solicitor
- lot of aggravating factors present
- large number of transactions involved

g. **Compensation**

The Tribunal also has the power to award up to £5000 compensation to secondary complainers where this is requested by them in complaints under the new Rules. Compensation may be appropriate in the following circumstances

- the secondary complainer has requested compensation
- the solicitor accepts the amount of compensation due
- there is evidence of the loss, stress and inconvenience to the secondary complainer and the Tribunal is satisfied that this is as a direct result of the respondent's misconduct.

- this can be imposed in addition to any of the other sentences available to the Tribunal

h. **Retraining the Solicitor**

The Tribunal cannot do this at present for misconduct cases due to an error in the legislation but it would be appropriate where the Tribunal felt that a solicitor would benefit from retraining in a certain area of the law