



# Professional Conduct Committee Sanctions Guidance

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## 1. Introduction

1.1 This guidance has been developed by the Architects Registration Board (ARB) to assist its Professional Conduct Committee (PCC) in making fair, consistent and proportionate decisions in relation to sanctions. It is also intended to assist the public and architects in understanding the PCC's decision-making process. The content of the guidance draws on an analysis of previous PCC decisions and relevant caselaw.

1.2. Sanctions are applicable in cases where an architect is found guilty of unacceptable professional conduct and/or serious professional incompetence. Sanctions are also applicable when an architect is convicted of a criminal offence which has material relevance to their fitness to practise.

1.3. While the PCC may rely on this document for guidance and consistency, it is not intended in any way to fetter the discretion of the PCC when deciding what, if any, sanction to impose. Each case will turn on its own facts and PCC members are expected to exercise their own judgment in making decisions.

1.4. This guidance was approved by the Board on 9 February 2022 and adopted by the PCC from 1 April 2022.

## 2. The purpose of sanctions

2.1 The primary purpose of sanctions is to protect members of the public, to uphold public confidence in the profession, and to declare and uphold proper standards of conduct and competence. Sanctions are not imposed to punish architects, but they may have a punitive effect.

## 3. Sanctions available

3.1 If an architect is found guilty of unacceptable professional conduct, serious professional incompetence, and/or convicted of a relevant criminal offence, the PCC must decide what, if any, sanction should be imposed. Under the Architects Act 1997 (the Act) the sanctions available to the PCC are:

- Reprimand
- Penalty order
- Suspension
- Erasure

3.2 The Act does not require the PCC to impose a sanction in every case where a guilty finding is reached, so the PCC may choose to make no disciplinary order.

#### 4. The Professional Conduct Committee's approach

4.1 In making a decision the PCC will consider the seriousness of the case and determine a fair and proportionate sanction. It must consider each sanction option available to it, in ascending order, starting with the least restrictive. This includes considering whether a sanction is necessary in the circumstances of the case.

4.2 The case of **Raschid v General Medical Council [2006] EWHC 886 (Admin) (per Collins J)** sets out the approach to be taken when imposing sanctions:

*'It is necessary for a Panel, when considering the appropriate sanction, to work from the bottom up [...] to consider the least penalty and to ask itself whether that is sufficient, and, if not, then to go to the next one, and so on. Thus they go from taking no action and merely recording a serious professional misconduct finding through a reprimand, the imposition of conditions, suspension, and the final sanction of erasure.'*

4.3 The court further elaborated on the approach to sanctions in **Fuglers & Ors v Solicitors Regulation Authority [2014] EWHC 179 (per Popplewell J)** and stated as follows,

*'There are three stages to the approach... The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose the sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.'*

4.4 In deciding what sanction to impose the PCC should have regard to the principle of proportionality, weighing the interests of the public with those of the architect. The interference with the architect's right to practise whilst using the title 'architect' must be no more than necessary to achieve the PCC's purpose of protecting the public and upholding public confidence in the profession and proper standards.

4.5 Once the PCC has reached what it considers to be the necessary and proportionate sanction it should then 'test' its decision by considering the following, more severe, sanction and determine why that would not be appropriate or proportionate in the circumstances of the case.

4.6 Full written reasons should be given for the PCC's decision, including all relevant considerations in reaching that conclusion.

## 5. Aggravating and mitigating factors

5.1 Before considering which sanction, if any, it should impose, the PCC must consider the aggravating and mitigating factors in the case. Aggravating factors are features of the case which make it more serious. Mitigating factors are features which make it less so.

5.2 The PCC should weigh the aggravating and mitigating factors thoroughly, paying careful regard to the weight that it has given to those factors in demonstrating the proportionality of any sanction it determines to impose.

5.3 The list below provides some common examples of aggravating and mitigating factors (the list is not exhaustive). These factors are not determinative of the seriousness of the conduct and/or incompetence. They are there to assist considerations of fairness and proportionality when determining the appropriate sanction.

### 5.3.1 Aggravating Factors

- Substantial risk of harm to clients and/or the wider public
- A pattern of poor conduct/competence
- Refusal or inability to acknowledge failings
- Failure to engage with the disciplinary process constructively
- Failure to take appropriate remedial steps
- A lack of sufficient insight and/or remorse
- Previous disciplinary history
- A finding of dishonesty
- Misconduct involving the commission of a criminal offence
- Conduct or actions that were repeated or deliberate
- Conduct affecting someone vulnerable
- Concealment of wrongdoing

### 5.3.2 Mitigating Factors

- Little or no risk of harm to clients and/or the wider public
- Conduct/incompetence representing an isolated failing or brief duration in an otherwise unblemished career
- Evidence of insight and/or remorse
- Personal circumstances such as periods of stress or illness
- Evidence of remedial action taken to prevent repetition

- Evidence of good character
- The architect voluntarily notifying ARB of the facts giving rise to the disciplinary proceedings
- Open and frank admissions at an early stage
- Acted under duress or deception from another party (including client)

5.4 As a general principle, the PCC will be less able to take mitigating factors into account when the concern is about public safety, or is of a more serious nature, than if the concern is about public confidence in the profession.

### **References and testimonials**

5.5 Architects may submit references and testimonials as mitigation evidence. The PCC should assess the usefulness of such references, considering factors such as:

- The availability of referees;
- the seriousness of the offence;
- the relationship of the referee to the architect;
- whether the referee is aware of the allegation(s) faced by the architect;
- whether the referee is aware their testimonial will be submitted to the PCC in mitigation.

5.6 The PCC should not draw adverse inference from the absence of references or testimonials.

### **Insight and Remediation**

5.7 The PCC should take account evidence of both insight and remediation – that is, whether the architect has demonstrated an accurate and full understanding of their failings and whether they have taken steps to set things right. They may have taken steps to remedy the issues which led to the complaint, or taken steps to improve their future practice, or both.

5.8 The PCC should focus on whether there is real evidence that the architect has been able to look back at their conduct with a self-critical eye and that they have acknowledged fault, expressed contrition and/or apologised. It should consider whether the architect has truly understood their failings, any underlying reasons for them, and the impact their actions had. In effect, they need to demonstrate to the PCC that there is a real reason to believe they have learned a lesson from the experience.

## 6. The sanctions

### 6.1 No sanction

6.1.1 In most cases where there has been an adverse finding against an architect a sanction will be necessary to protect the public and uphold public confidence in the profession; however, the Act does not require the PCC to impose a sanction in every case.

6.1.2 In rare cases the PCC may conclude, having had regard to all the circumstances, that the level of seriousness of the architect's conduct or incompetence is so low that it would be unfair or disproportionate to impose a sanction. Where the PCC has determined a sanction is not required, it is particularly important that it is clear in its written reasons as to the exceptional circumstances that justified imposing no sanction.

### 6.2 Reprimand

6.2.1 Where the PCC decides it is necessary to impose a sanction, a reprimand is the least severe sanction that can be applied. It may be used in relation to offences which fall at the lower end of the scale of seriousness, and where it would be appropriate to mark the conduct or incompetence of an architect as being unacceptable.

6.2.2 A reprimand may be considered appropriate where one or more of the following factors are present (this list is not exhaustive):

- There is no evidence that the architect poses a risk to the public;
- The conduct and/or incompetence found has not seriously affected clients or the wider public;
- There is evidence of genuine insight and remorse;
- The architect has taken corrective steps;
- There is evidence of previous good disciplinary history;
- The conduct and/or incompetence found represents an isolated incident;
- The architect's actions were not deliberate.

### 6.3 Penalty order

6.3.1 A penalty order is a monetary fine the architect must pay. Under the Architects Act the Professional Conduct Committee may issue a penalty order of up to £2500

for each charge (there are three possible charges: unacceptable professional conduct, serious professional incompetence and/or that the architect has been convicted of a relevant offence). Penalty orders are payable to HM Treasury.

6.3.2 A penalty order may be considered appropriate where one or more of the following factors are present (this list is not exhaustive):

- The failings found are too serious to warrant a reprimand;
- There is evidence of limited insight or remorse;
- The architect has benefitted financially from the conduct;
- The architect and/or their practice have sufficient financial resources.

6.3.3 The PCC will specify the period within which the sum must be paid, and a failure to satisfy the order may lead to it being replaced by a suspension or erasure order.

#### 6.4 **Suspension order**

6.4.1 A suspension order may be imposed by the PCC for serious offences, but where the circumstances are not so serious as to warrant erasure from the Register. A suspension has a deterrent effect and can be used to send out a signal to the profession and to the public about what is regarded as behaviour unbecoming of an architect.

6.4.2 Suspensions are for a maximum period of two years and the architect is automatically reinstated to the Register at the end of the suspension period. Any individual suspended from the Register cannot use the title 'Architect' in business or practice during that time (nor any reference to membership or fellowship of the Royal Institute of British Architects).

6.4.3 A suspension order may be considered appropriate where one or more of the following factors are present (this list is not exhaustive):

- The failing or conduct is so serious that a reprimand or penalty order would be insufficient to protect the public or uphold public confidence in the profession;
- The behaviour is not fundamentally incompatible with continuing to be an architect;
- There is no evidence of entrenched integrity issues;
- There is a lack of sufficient insight or remorse;
- The PCC is satisfied that the behaviour is unlikely to be repeated;



- The conduct is capable of being rectified;
- There is no evidence of repetition of similar behaviour since the incident;
- The architect has failed to pay a previously imposed penalty order.

6.4.4 The length of the suspension is a matter for the PCC's discretion. It should provide reasons for the period of suspension, including the factors that led it to conclude that the duration was appropriate. When determining the appropriate length of suspension, the PCC's primary consideration will be protecting the public and public confidence in the profession, and the seriousness of its findings. It will also take account of mitigating and aggravating factors and the time needed to allow the architect to take corrective steps.

## 6.5 Erasure order

6.5.1 An erasure order may be imposed by the PCC for those offences that are so serious that only removal from the Register will protect the public and/or uphold public confidence in the profession.

6.5.2 Erasure may be considered appropriate where one or more of the following factors are present (this list is not exhaustive):

- There is a serious risk of harm to the public;
- The architect has committed a serious criminal offence;
- There is evidence of a deliberate or reckless disregard for public safety and/or the standards expected of an architect;
- The architect's conduct or failing is fundamentally incompatible with continuing to be an architect;
- The PCC lacks confidence that a repeat offence will not occur;
- There is evidence of dishonesty or a serious lack of integrity;
- There is evidence the architect put their own interests before their client;
- The architect demonstrates a persistent lack of insight into the seriousness of actions or consequences;
- Non-payment of a previously imposed penalty order.

6.5.3 Any individual erased from the Register is not permitted to use the title 'Architect' in business or practice (nor any reference to membership or fellowship of Royal Institute of British Architects).

6.5.4 Erasure from the Register is permanent, unless, and until, the architect applies to re-join the Register and that application is successful. Such an application can only be made after a period of time recommended by the PCC (a minimum of two years).

The PCC must provide in its reasons the duration before which the architect is entitled to apply for restoration to the Register, and why. Applications for reinstatement to the Register are considered by the Board.

## 7. Criminal convictions

7.1 Architects are referred to the PCC when they have been convicted of a criminal offence or received a caution that the Registrar considers is relevant to their fitness to practise as an architect. If the PCC receives a signed certificate of a conviction or determination from a criminal court in the United Kingdom or a foreign court for an offence, which, if committed in England and Wales, would constitute a criminal offence, it must accept the certificate as conclusive evidence that the offence was committed. The architect can then make submissions as to why no further action or a more lenient sanction should be made by the PCC.

7.2 The purpose of sanctions in relation to a conviction is not to punish the architect a second time for the same offence, but again to protect the public and uphold public confidence in the profession. Cases about criminal offending illustrate the principle that, *'the reputation of the profession is more important than the fortunes of any individual member.'* **(Bingham L.R) Bolton v Law Society [1994] 1 WLR 512**

7.3 As a general principle, where an architect has been convicted of a serious relevant criminal offence, they should not be permitted to resume practice until they have completed their sentence.

## 8. Dishonesty

8.1 The Code of Conduct and Practice states that architects must always act with honesty and integrity. This is a fundamental tenet of the Code and underpins the trust the public places in the profession. Consequently, a finding of dishonesty is particularly serious and likely to warrant more serious action.

8.2 There is a broad spectrum of dishonesty which the PCC must consider when determining the appropriate and proportionate sanction. Dishonest conduct can take many forms: *'some criminal, some not; some destroying trust instantly, others merely undermining it to a greater or lesser extent'* **Lusinga v Nursing and Midwifery Council [2017]**. In every case the PCC should carefully consider the nature of the dishonesty and determine how serious it is.

8.3 The following examples are of conduct generally considered more serious, and so more likely to result in erasure:

- A deliberate cover up when things have gone wrong;
- Dishonesty resulting in a direct risk to clients or the wider public;
- Dishonesty affecting someone vulnerable;
- Dishonesty resulting in personal financial gain;
- Premeditated, systematic or longstanding deception.

8.4 In contrast, incidents of opportunistic or spontaneous dishonesty, and one-off incidents may be considered less serious by the PCC.

If you need the information in this document in a different format such as an audio recording or braille, you can:

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- call 020 7580 5861
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We'll consider your request and get back to you within 14 days.



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