

## Improper conduct under the Act

**Improper conduct** in the Act is defined as:

*(a) the commission by the licensee of an act which renders the licensee no longer a fit and proper person to provide property services or a particular class of property service,*

*(b) the commission by the licensee of a contravention of—*

*(i) section 28 (1), 29 (9), 31 (5), 37 (1), (2), (4), (5), (6) or (7), 41 (1), 43 (1), (2) or (3), 44 , 45 (1) or (2), 55 (1) or (2), 56 (1), 57 (1), 58 (3), 59 (1), 60 (1), 61 , or 81 (1) or (2), or*

*(ii) a provision of regulations made under section 46 , 62 or 95 ,*

*Or*

*(c) the giving by the licensee of a statement of advised market value or advised letting value of land which is clearly unreasonable;*

**1) In advance of submitting a complaint about a licensee to the Authority, it is advisable to first consider whether your complaint of improper conduct falls under any of the specific grounds defined in the Act as set out below:**

- Failing to have the appropriate licence for the property service provided<sup>1</sup>
- Failing to notify the Authority of known errors or updates required to the Register<sup>2</sup>
- Failing to take reasonable steps to ensure that persons performing the functions of a given position are fit and proper persons to hold that position<sup>3</sup>
- Failing to display and produce a licence<sup>4</sup>
- Failing to notify the Authority of a “material matter”<sup>5</sup>
- Failing to issue a letter of engagement<sup>6</sup>
- Failing to retain records for 6 years<sup>7</sup>

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<sup>1</sup> Improper conduct under section 28(1)

<sup>2</sup> Improper conduct under section 29(9)

<sup>3</sup> Improper conduct under section 31(5)

<sup>4</sup> Improper conduct under section 37

<sup>5</sup> Improper conduct under section 41(1)

<sup>6</sup> Improper conduct under section 43

<sup>7</sup> Improper conduct under section 44

- Failing to have a Professional Indemnity Insurance Policy in place<sup>8</sup>
- Failing to give vendor statement of Advised Market Value within 7 days of request<sup>9</sup>
- Failing to give lessor statement of Advised Leasing Value within 7 days of request<sup>10</sup>
- Advertising land for sale at a lower price than the Advised Market Value<sup>11</sup>
- Failing to produce required information to the Authority regarding Advised Market Value or Advised Leasing Value which is clearly unreasonable<sup>12</sup>
- Accepting bid at auction from the vendor or a person bidding on the vendor's behalf<sup>13</sup>
- Failing to meet disclosure requirements re: sale of residential property<sup>14</sup>
- Providing financial services and property services without notice made in the specified form<sup>15</sup>
- Failing to retain records of bids (not by auction) for 6 years<sup>16</sup>
- Failing to maintain Continuous Professional Development<sup>17</sup>
- Giving a clearly unreasonable a statement of advised market value or advised letting value of land
- Breaching Regulations made under the Act

S.I. No. 182/2012 - Property Services (Regulation) Act 2011 (Professional Indemnity Insurance) Regulations 2012.

<http://www.irishstatutebook.ie/eli/2012/si/182/made/en/print>

S.I. No. 199/2012 - Property Services (Regulation) Act 2011 (Client Moneys) Regulations 2012

<http://www.irishstatutebook.ie/eli/2012/si/199/made/en/print>

S.I. No. 534/2008 - Housing (Standards for Rented Houses) Regulations 2008

<http://www.irishstatutebook.ie/eli/2008/si/534/made/en/print>

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<sup>8</sup> Improper conduct under section 45

<sup>9</sup> Improper conduct under section 55(1)

<sup>10</sup> Improper conduct under section 55(2)

<sup>11</sup> Improper conduct under section 56(1)

<sup>12</sup> Improper conduct under section 57(1)

<sup>13</sup> Improper conduct under section 58(3)

<sup>14</sup> Improper conduct under section 59(1)

<sup>15</sup> Improper conduct under section 60(1)

<sup>16</sup> Improper conduct under section 61

<sup>17</sup> Improper conduct under section 81 (this section has yet to commence)

**2) If your complaint does not come under any of the specific examples set out above, please then consider whether your complaint might reasonably be considered to fall under paragraph (a) of the definition of improper conduct set out below.**

The definition of improper conduct includes under paragraph (a) of the definition, a general test of acts which could be considered serious enough to render a licensee as not a fit and proper person to hold a licence.

**Is your complaint so serious that revocation of the property service providers licence would be a proportionate sanction?**

To assist you in assessing this question we provide answers below to the most common queries received by the Authority, for you to consider, before submitting your complaint.

**What is revocation of a licence and what does it entail?**

Revocation entails removing the licensee's licence to trade. The action complained of would have to be so serious that the licence must be revoked by decision of the Authority. Such a decision would constitute a major sanction under the terms of the Act and would have to be approved by the High Court.

**What effect does revocation of a licence have?**

The net effect of such a decision is to take away a licensee's ability to earn a living as a property services provider. This is something that the High Court would need to take into account when deciding whether revocation of a licence was a proportionate sanction of the Authority.

**Does revocation have immediate effect?**

Revocation of a licence requires confirmation by the High Court and is appealable by an affected licensee to that court.

**What matters are taken into account by the Authority when sanctioning?**

The Authority and/or the High Court are obliged under section 73 of the Act, when considering such a sanction, to take into account the circumstances of the improper conduct concerned (including the factors occasioning it) and may have regard to the following:

(i) the need to ensure that any sanction imposed—

(I) is appropriate and proportionate to the improper conduct, and

(II) if applicable, will act as a sufficient incentive to ensure that any like improper conduct will not occur in the future,

(ii) the seriousness of the improper conduct,

(iii) the income of the licensee in the financial year ending in the year previous to the year in which the improper conduct last occurred and the ability of the licensee to pay an amount which falls within paragraph (c), (d), (e) or (f) of the definition of “major sanction” in section 2 (1),

(iv) the extent of any failure by the licensee to co-operate with the investigation concerned of the licensee,

(v) any excuse or explanation by the licensee for the improper conduct or failure to co-operate with the investigation concerned,

(vi) any gain (financial or otherwise) made by the licensee or by any person in which the licensee has a financial interest as a consequence of the improper conduct,

(vii) the amount of any loss suffered or costs incurred as a result of the improper conduct,

(viii) the duration of the improper conduct,

(ix) the repeated occurrence of improper conduct by the licensee,

(x) if applicable, the continuation of the improper conduct after the licensee was notified of the investigation concerned,

(xi) in the case of a property services employer, the extent to which the employer knew, or ought to have known, that the improper conduct had occurred or was occurring,

(xii) if applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the licensee intended to prevent improper conduct from occurring,

(xiii) if applicable, the extent and timeliness of any steps taken to end the improper conduct and any steps taken for remedying the consequences of the improper conduct,

(xiv) whether a sanction in respect of like improper conduct has already been imposed on the licensee by a court, the Authority or another person, and

(xv) any precedents set by a court, the Authority or another person in respect of previous improper conduct.

**3) Accordingly, if your complaint falls outside any of the definitions of improper conduct provided for by the Act, it is likely that the Authority will be obliged to decline to investigate the complaint matter.**

See below for possible alternative options that may be available to you.

**4) If your complaint falls outside the scope of the Property Services (Regulation) Act 2011 it is still possible that there are other avenues open to you aside from costly litigation.**

Industry representative bodies: the Institute of Professional Auctioneers and Valuers, the Society of Chartered Surveyors Ireland (SCSI and IPAV) and the Residential Tenancies Board (RTB) also have complaints and redress systems through which a client or customer of a PSP may wish to pursue a complaint.

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**RTB**

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