

# 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 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>
- 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>

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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

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

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

- 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

1. 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>

2. 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>

3. SI 564 of 2020 - Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020 – SI 564 of 2020

<http://www.irishstatutebook.ie/eli/2020/si/564/made/en/print>

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<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)

On 30 November 2020, the Minister for Justice, Ms. Helen McEntee signed the Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020 – SI 564 of 2020 effective from 30 November 2020. These Regulations provide for additional standards to be observed in the provision of property services by property services providers.

Breaches of the Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020 fall under the definition of “**improper conduct**” in Section 2(1) the Property Services (Regulation) Act 2011 (the Act). The Authority have produced a plain English explanatory guide for these regulations. This can be found at <https://www.psr.ie/SI-Minimum-Standards-Regulation-Plain-English-Guide.pdf>.

2. If your complaint does not come under any of the specific examples set out in paragraph one, 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) i.e. the commission by the licensees of an act which renders the licensees no longer a fit and proper person to provide property services.

The actions of the licensee must be of the utmost seriousness and are totally contrary to the manner in which licensees are expected to, or should behave.

3. To establish whether your complaint is so serious that revocation of the property service provider’s licence would be a proportionate sanction, please refer to the following most common queries received by the Authority, for you to consider, before submitting your complaint.

a) 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.

b) What effect does revocation of a licence have?

The net effect of such a decision is to take away a licensee’s ability to ever work in the sector again 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.

c) Does revocation have immediate effect?

A decision of the Authority to revoke a licensee’s licence requires the confirmation of the High Court to be effective. A decision by the Authority to revoke a licensee’s licence is appealable by the licensee to the High Court.

d) 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. 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.

See below table of the most common issues, which do **NOT** fall under the remit of the Property Services Regulatory Authority (PSRA)

<b>Subject Matter:</b>	<b>Type of Allegations/Issues:</b>	<b>Recourse:</b>
<b>Complaint against an Owner Management Company (OMC)</b>	Complaint against OMC/ property service provider acting on their behalf on issues including service charges, AGM'S, Maintenance of Common areas etc.	OMCs are governed by the Multi-Unit Development Act 2011 (MUD) and are subject to company law. Any member of an OMC has recourse to the circuit court.
<b>Complaint against Landlord</b>	Complaint by tenant against landlord/letting agent regarding tenancy agreement, inspections, rent increases, issues with neighbouring tenants etc.	The Residential Tenancies Board (RTB) <a href="http://www.rtb.ie">www.rtb.ie</a>
<b>Complaint against a licensed Property Services Provider regarding a property In Receivership</b>	Complaint by previous owner against estate agent regarding the sale of property in receivership.	Agent must act on instruction of their client (the receiver), contact bank/receiver and seek legal advice.
<b>Complaint against a licensed Property Services Provider regarding a Valuation</b>	Complaint against agent regarding a valuation or the conduct of a property service provider while carrying out a valuation.	Valuation is not defined as a 'property service' within the Act. You may wish to seek legal advice or seek advice from a reputable firm.
<b>Complaint against a licensed Property Services Provider regarding the successful bidder.</b>	Complaint against estate agent regarding a situation when you were not the successful bidder e.g. Gazumping/ Gazundering.	Agent is contracted by their client (the vendor) and must act on their instruction. Ultimately, it is the vendor's decision on the price to sell the property at and to whom.
<b>Complaint against a licensed Property Services Provider regarding Issues Pre-Property Services (Regulation) Act 2011</b>	Any complaint made against a licensee regarding matters pre 2012.	The Act is intended to be prospective, not retrospective and on that basis, the Authority is unable to investigate matters that occurred prior to the enactment. You may wish to seek legal advice on this matter.

<u>Subject Matter:</u>	<u>Type of Allegations/Issues:</u>	<u>Recourse:</u>
<b>Complaint against a licensed Property Services Provider regarding Property Management Services</b>	Complaint made against an agent regarding the management of a property where the agent had not let the property to the tenant/sourced the tenant.	This is not considered as a 'property service' within the Act. You may wish to seek legal advice or contact your landlord.
<b>Complaint against a licensed Property Services Provider regarding Data Protection matters</b>	Complaint made against an agent regarding a data protection breach.	Data Protection Commission (DPC) – <a href="https://www.dataprotection.ie/">https://www.dataprotection.ie/</a>