

# **Property Services Regulatory Authority**

## **Sanction Guidance Document**

**- February 2023**

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## 1. Introduction

Under the [Property Services \(Regulation\) Act 2011](#) the Authority is empowered to:

- Investigate complaints of improper conduct made against licensed Property Services Providers (PSPs) and initiate investigations for the purpose of ensuring compliance with the law.

Any person may make a complaint, in writing, to the Authority against a PSP in relation to improper conduct in the course of providing a property service. The Authority is required to investigate all complaints unless it is satisfied that:

- It is not made in good faith
- Is frivolous or vexatious without substance or foundation
- Or is likely to be resolved by mediation or other informal means between the parties
- Even if found to be true would not constitute improper conduct.

## 2. Finding of Improper Conduct

Where a finding of improper conduct is made following an investigation; the Authority can impose any of the following sanctions:

- Issue a minor sanction of a reprimand, warning, caution or advice

Any such decision can be appealed to the Property Services Appeal Board within 30 days.

- Issue a major sanction which may include
  - Revocation of the PSP's licence
  - Suspend the PSP's licence for a specified period
  - Direct the PSP to pay:
    - Up to €50,000 into the Property Services Compensation Fund
    - Up to €50,000 to the Authority towards the cost of the investigation
    - Up to €250,000 to the Authority by way of a financial penalty, or
- Any combination of the foregoing.

Major sanction decisions can be appealed to the High Court within 30 days of receiving the decision, as per Section 70(1) of the Property Services (Regulation) Act 2011.

### **3. Sanctions Process – Determining the Appropriate Sanction**

Where a finding of Improper Conduct has been made, a sanction will be imposed. There are two categories of sanction;

- 1) Minor
- 2) Major

#### **3.1. Minor Sanctions**

Where the CEO/the Board of the Authority, on considering a final investigation report, finds that improper conduct has occurred warranting a Minor sanction, an appropriate Minor sanction can be imposed. The PSP is advised in writing of the sanction decision. All parties may appeal the imposition of a minor sanction to the Property Services Appeals Board within 30 days of receiving the decision. The Appeals Board can be contacted at the following address:

The Secretary  
The Property Services Appeal Board  
51 St Stephen's Green  
Dublin 2  
D02 HK52

#### **3.2. Major Sanctions**

Where the CEO on considering a final investigation report finds that improper conduct has occurred warranting a Major Sanction, a meeting of the Board of the Authority will be arranged to convene for consideration of the final report.

The Board of the Authority will convene to consider the final investigation report and will decide whether improper conduct has occurred warranting a Major sanction. The Property Services Provider (PSP) is informed in writing of the Board's decision on their findings of improper conduct.

Where such improper conduct is found to have occurred, the PSP is advised of the date on which the Board will meet to consider sanction, and is afforded the opportunity to provide (i) written submissions on sanction for consideration by the Board and/or (ii) to attend the Sanction Meeting to provide oral submissions on sanction to the Board.

**Note:** The PSP is entitled to be accompanied by a legal or any other representative if they desire. However, they are required to advise the Authority of the person(s), accompanying them to the sanction meeting.

### **3.2.1. Evidence to Accompany Submissions on Sanction**

Where a PSP or former PSP makes submissions on sanction to the Board either in writing or orally at a sanction meeting, the onus is on the PSP to submit and or provide any necessary evidence of mitigation, which is relied upon as part of the sanction meeting. The Board can only consider matters relating to mitigation where the necessary evidence is provided.

By way of example, where the PSP has addressed all or in part the issues relating to improper conduct found at investigation stage, and where the PSP relies on having addressed the improper conduct as a mitigation factor at sanction stage, the onus is on the PSP to present proof / documentation of how the matter has been addressed. For the Board to take account of any matter relating to mitigation, it requires submission of factual documentation / information, which can then be considered by the Board when determining sanction. Further, by way of example submission of factual documentation may include:

- Client / Office Accounts Bank Statements
- Relevant / recent Accountants Report
- Statement of earnings (personal / business)
- Statement of deficits
- Official statements of compliance (e.g. Tax Clearance)
- Relevant and related statement from client(s)
- Any other factual and relevant document demonstrating the matter of improper conduct has been addressed in part or in full.

The onus is on the PSP to provide the necessary proofs on mitigation factors relied on as part of the Board's consideration and determination of sanction.

#### **4. Authority's Legal Advisor**

A legal advisor is appointed to provide legal advice to the Board on relevant matters of law and procedure relating to the consideration of final investigation reports. When requested by the Board the legal advisor may intervene at any point in proceedings to provide guidance on any necessary point of law.

The legal advisor shall not participate in the decision-making processes of the Board but may be present at the Board's deliberations.

Throughout the process of considering the final investigation report, where the Board requires legal advice, it should obtain it from the Board's legal advisor. Prior to the Board acting on that advice, the parties should be informed by the legal advisor of the advice provided to the Board.

#### **5. Preparing for the Sanction Hearing**

As highlighted above, the PSP will be advised of the Sanction Meeting date, and invited to provide written submissions and/or to present before the Board to provide oral submissions on Sanction.

It should be noted, at this stage of the process, Improper Conduct has already been found, and submissions are solely relating to mitigating factors the PSP wishes to make and to be taken into consideration when imposing the appropriate sanction. There is no opportunity at this stage for new evidence to be submitted or considered or for any other matter to be raised concerning the investigation except for evidence / oral presentation by the PSP on sanction.

##### **5.1. Preparing Submissions**

When preparing submissions for the Board, it should be noted that under Section 73 of the Property Services (Regulation) Act 2011, the Authority shall take into account the circumstances relating to the improper conduct (including the factors occasioning it) and, without prejudice to the generality of the foregoing, may have regard to—

(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.

Accordingly, a PSP may wish to consider the above when composing submissions, and ensure that any relevant evidence or documentation referred to in submissions is made available to the Board in advance of the Sanction Hearing, so that they can fully consider the submissions and evidence. Please refer to section 3.2.1 of this document for further information on evidence required for sanction hearing.

## **5.2. Selecting the Appropriate Sanction**

Following consideration of the PSP's submissions, the Board will consider which sanction is most appropriate. In order to do so, they will consider the sanction from least severe to most severe, until they agree the sanction is appropriate to the level of Improper Conduct, which occurred.

## **6. Notice of Sanction Imposed and Avenues of Appeal**

Once the Board has decided on the appropriate sanction, the PSP will be advised of same in writing. When the PSP has received the notification of sanction, the PSP will have 30 days to appeal the imposition of a **Major Sanction** to the High Court.



Should no appeal be lodged within 30 days, the PSRA will make an application to the High Court to confirm the Sanction. Once the Sanction is confirmed by the High Court, it is no longer open to you to appeal the Sanction.

For information on notification of **Minor Sanctions** and avenues of appeal, please refer back to **Section 3.1**.

### **7. Major Sanction placed on PSRA Website.**

All major sanctions confirmed by the High Court are placed on the PSRA Website.

## 8. Summary of Improper Conduct Sanctions Minor and Major

Minor Sanction	Major Sanction
<ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Warning</li> <li>• Caution</li> <li>• Advice</li> </ul>	<ul style="list-style-type: none"> <li>• Revoke the PSP's licence</li> <li>• Suspend the PSP's licence for a specified period</li> <li>• Direct the PSP to pay:               <ul style="list-style-type: none"> <li>• Up to €50,000 into the Property Services Compensation Fund</li> <li>• Up to €50,000 to the Authority towards the cost of the investigation</li> <li>• Up to €250,000 to the Authority by way of a financial penalty, or</li> <li>• Any combination of the foregoing.</li> </ul> </li> </ul>
Imposed by CEO of the PSRA or may be also imposed by the Board of the PSRA, when necessary.	Imposed by Board of the PSRA
Can make submissions following receipt of Draft Report	Can make submissions following receipt of Draft Report AND prior to convening of the Board
Can be appealed to the Property Services Appeals Board	Can be appealed to the High Court