

DISCIPLINARY PROCEEDINGS

1. As set out in Section 11 of the Introduction to the City Code on Takeovers and Mergers (the *Code*), the Panel may impose sanctions on a person who has acted in breach of rules made by the Panel or who has failed to comply with a direction given by the Panel.
2. Section 11(a) of the Introduction provides that the Executive may itself deal with a disciplinary matter where the person who is to be subject to the disciplinary action (hereafter referred to as the “respondent”) agrees the facts and the action proposed by the Executive. Before the Executive decides to commence disciplinary proceedings before the Hearings Committee, it may seek to deal with the matter by agreement in this way. In other cases, the Executive may decide to commence disciplinary proceedings before the Hearings Committee.
3. This Note sets out, in particular, the factors which the Executive will take into account when considering whether to initiate disciplinary action and in proposing the appropriate sanction to the Hearings Committee.
4. In certain cases, the Executive may decide, having regard to all the circumstances of the case, that despite concerns in relation to the behaviour of a person, it is not appropriate to take disciplinary action. In such cases, the Executive may take such action as it considers necessary to bring to the attention of that person that its conduct or behaviour has given rise to such concerns.

Criteria for taking disciplinary action and proposing appropriate sanctions

5. In considering whether to take disciplinary action (either by agreement or by commencing disciplinary proceedings before the Hearings Committee) and in proposing the appropriate sanction in respect of any breach, the Executive may take into account some or all of the following criteria:
 - 5.1 the seriousness of the breach, failure or behaviour in question, including its duration, in relation to the nature of the rule or direction contravened;
 - 5.2 whether the breach, failure or behaviour in question was a one-off incident or a recurring breach;
 - 5.3 the prior disciplinary record and compliance history of the respondent, including whether the Executive, the Hearings Committee or the Panel has taken disciplinary or other action against the respondent in the past for similar breaches, failures or behaviour, and whether any other regulatory or professional body has found the respondent to have committed similar or analogous breaches in the past;
 - 5.4 the extent to which the breach, failure or behaviour was deliberate or reckless, or involved any element of intention or bad faith on the part of the respondent, or was negligent;

- 5.5 whether the breach, failure or behaviour involved the contravention of any prior direction, ruling, instruction or guidance of the Panel or the Executive, and whether the Executive has previously brought to the respondent's attention its concerns as to the respondent's behaviour;
- 5.6 whether the breach, failure or behaviour reveals serious or systemic weaknesses in the respondent's management systems or internal controls;
- 5.7 whether the respondent cooperated with the Executive's investigations;
- 5.8 whether the respondent brought the matter to the attention of the Executive, including the speed and effectiveness with which this was done;
- 5.9 whether the respondent attempted to conceal information from, provide misleading information to or otherwise mislead the Executive;
- 5.10 the effect of the breach, failure or behaviour in question on the market;
- 5.11 the effect of the breach, failure or behaviour in question on the transaction concerned or on the respondent, including whether the breach, failure or behaviour in question resulted in any gain for the respondent or caused any loss or detriment to be suffered by any other person, or influenced the outcome of any transaction (including any anticipated or contemplated transaction);
- 5.12 the extent to which the breach, failure or behaviour may have undermined public confidence in the orderly functioning of the markets or in the conduct of takeovers generally, and the need to promote appropriate standards of behaviour in the conduct of takeovers;
- 5.13 the extent to which any other disciplinary action has been, or may be, taken against the respondent arising out of the same facts by any other regulatory organisation or, in the case of an employee, by his or her employer;
- 5.14 whether the respondent is an individual, and in the case of an individual, the experience of the respondent;
- 5.15 the extent to which the respondent has taken (and, if so, the speed and effectiveness with which this has been done), or is proposing to take, action to remedy the breach, failure or behaviour in question, or to remedy the effects of the breach, failure or behaviour in question;
- 5.16 the extent to which the respondent has taken (and, if so, the speed and effectiveness with which this has been done), or is proposing to take, remedial action to ensure that similar breaches, failures or behaviour do not occur in the future;
- 5.17 where the respondent is an exempt fund manager, an exempt principal trader, an approved intermediary or has any other special status, the extent to which the breach, failure or behaviour in question is compatible with his or her continuing to enjoy such exempt, approved or other special status, or with the standards expected of a person who enjoys such status;

- 5.18 where the respondent is authorised, approved or regulated by another UK or overseas regulatory authority or body, whether the Executive considers that the breach, failure or behaviour in question might also constitute an infringement of the rules or guidelines of that body and whether the matter was brought to the Executive's attention by that body; and
- 5.19 any other matter which the Executive considers relevant, including matters raised by the respondent by way of defence.
6. The Executive will consider the facts and relevant criteria present in each particular case and will make a decision based on the overall position. The Executive may take into account some or all of these criteria. However, it remains open to the Executive to conclude that disciplinary action is warranted by virtue of only some, or even only one, of these criteria.

Disciplinary Proceedings before the Hearings Committee

7. Where the Executive has decided to commence disciplinary proceedings before the Hearings Committee, responsibility for the conduct of those proceedings, procedural directions in connection with the proceedings and arrangements for the conduct of any hearing are matters for the Hearings Committee. In its written submissions to the Hearings Committee, the Executive will set out in full the breaches of the Code with which the respondent is charged.
8. In advance of any disciplinary hearing before the Hearings Committee of the Panel, the Executive will, taking account of the complexity of the case, ensure that the respondent is given adequate time and facilities for the preparation of his or her defence.
9. In disciplinary hearings before the Hearings Committee it will be for the Hearings Committee to determine whether or not there has been a breach of the Code, and if so, what (if any) sanction to impose. The Hearings Committee will consider the matter entirely afresh. Nothing in this statement should be interpreted as constraining the Hearings Committee's freedom of action in disciplinary matters, whether in relation to its determination as to whether there has been a breach of the Code or in relation to the imposition of sanctions.