

	Respondent type	Respondent comments	CICAIR response
Section 1 ¹			
1.	Director of a surveying company	"I am not clear why it is called 'indicative sanctions guidance'. I guess the word indicative gives panels some leeway in moving outside of the guidance? I realise that you will have taken legal advice on the current draft but I wasn't sure whether this made sense, especially given that 1.2.3 says... provide clarity to approved inspectors and other interested parties.... How can there be 'clarity' when the guidance is only 'indicative'? I realise that this is covered in 1.3 but one could argue that this represents a double negative. On the one hand the guidance is 'indicative', on the other hand it provides 'clarity' but on the other hand you can deviate from the guidance! This is all lawyer speak and not plain English. Personally, I would just call it "sanctions guidance" and drop 'indicative'."	Having considered the title of the current Guidance and the intention for clarity for Approved Inspectors, others in the industry and consumers, CICAIR agrees that maintaining the current title "Sanctions Guidance" is in the interests of all interested parties. ²
2.	Chartered Surveyor	"The AI are so absent it is beyond a joke. I do not even know what you are allowed to build since the AI started the race to the bottom. Five storey single staircase escape with 100% glass. I was a fan of the AI and they were needed to give LABC a customer focus and reminder that owners and agents are clients not there to serve them. I have witnessed some beyond shocking sign offs even on our own projects (where the plans were not followed) it's a time bomb waiting to go off. In the industry we all joke about the shocking new builds you see on right move and all say how did they get away with that..... Must have used an AI."	Thank you for your contribution. It is not possible to cover off every circumstance in the guidance. CICAIR would like to remind you of the Complaints Protocol which is a mechanism for reporting concerns about Approved Inspectors.
3.	Approved Inspector	S 1: Section 1 contains the statement 'Panels should, unless there is good reason not to do so, follow this Guidance. Where a Panel deviates from the Guidance it must explain why in the reasons	Deviations from the Guidance should only occur where the conduct the Panel is considering is novel and not addressed in

¹ Note: those who have responded with "no further comment" or similar are excluded from this table.

² Green shaded boxes indicate where amendments will follow on the draft.

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		<p>underpinning its decision’.</p> <p>██████ would comment that it would be beneficial to provide further guidance on ‘when’ a panel can deviate from the guidance and ‘why’ this may be necessary given the more detailed guidance. If the panel are to be allowed to move away from the guidance it may be more appropriate that any deviation should be agreed with the registrar.</p>	the Guidance.
4.	<p>Role within the National</p> <p>Fire Chiefs Council (NFCC)</p>	<p>1.3 – Given the fundamental purpose of this regulation is to maintain the reputation of the profession as one that can be trusted, with a robust process to follow, this allows the panel to deviate from this guidance. It is acknowledged they (the panel) must provide reasoning why, however, if the guidance and associated sanctions are robust there should be no need to deviate, providing a consistent approach to sanctions.</p>	See response to item 3, above.
5.	Industry Body	<p>Whilst the aims as listed are items are certainly worthy, it is noted that there is no mention of fairness. Which should surely be an aim, overriding objective and an overarching principle (3.2, where again it is absent). The Guidance should be able to inform how and why the sanctions will be applied. However, on these points the Guidance seems lengthy, vague and at times confused. The aims might better be achieved by publishing separate supplementary documents, which lie behind and complement the main sanctions guidance. This approach has been adopted in analogous regulatory systems. It is submitted that were the Guidance to be separated in such a way it would assist in achieving transparency.</p> <p>An example of apparent confusion and repetition can be seen at section 4 Decision Making and Reasons. Three steps are identified which a Panel must consider when deciding to impose a sanction. Step 2 states: “Consider each of the available penalties in ascending order of severity and consider proportionality and seriousness”.</p>	<p>To address the fairness point, CICAIR intends to amend 1.2.2. as follows: “aid CICAIR Panels in reaching a proportionate, consistent <u>and fair</u> approach to sanctions.”</p> <p>It is CICAIR’s view that paragraphs 4.1 and 4.3 are appropriate and 4.3 appropriately expands on step 2 of 4.1.</p>

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		<p>Immediately below the three stages at 4.3 it states:</p> <p>4.3 Step 2 above requires the Panel to:</p> <p>4.3.1 consider all the sanctions available to them in ascending order of seriousness;</p> <p>4.3.2 start with the least restrictive sanction, until finding the level that it determines is sufficient to deal with the factors that resulted in the breach or breaches;</p> <p>4.3.3 satisfy itself that the sanction that it has chosen is proportionate and otherwise appropriate having regard to all relevant factors. The Panel should also consider the next most severe sanction available and explain why it is not necessary to impose that sanction.</p> <p>4.3.1 and 4.3.2 appear to restate what is put forward under Step 2, rather than adding insight or additional thought.</p> <p>The effect of 4.3.3 is considered below</p>	
6.	Approved Inspector	<p>Whilst the aims as listed are items are certainly worthy, it is noted that there is no mention of fairness Which should surely be an aim, overriding objective and an overarching principle (3.2, where again it is absent).</p> <p>The Guidance should be able to inform how and why the sanctions will be applied. However, on these points the Guidance seems lengthy, vague and at times confused. The aims might better be achieved by publishing separate supplementary documents, which lie behind and complement the main sanctions guidance. This approach has been adopted in analogous regulatory systems. It is submitted that were the Guidance to be separated in such a way it would assist in achieving transparency.</p> <p>An example of apparent confusion and repetition can be seen at section 4 Decision Making and Reasons. Three steps are identified which a Panel must consider when deciding to impose a sanction. Step 2 states: "Consider each of the available penalties in ascending</p>	See response to item 5, above.

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		<p>order of severity and consider proportionality and seriousness". Immediately below the three stages at 4.3 it states:</p> <p>4.3 Step 2 above requires the Panel to:</p> <p>4.3.1 consider all the sanctions available to them in ascending order of seriousness;</p> <p>4.3.2 start with the least restrictive sanction, until finding the level that it determines is sufficient to deal with the factors that resulted in the breach or breaches;</p> <p>4.3.3 satisfy itself that the sanction that it has chosen is proportionate and otherwise appropriate having regard to all relevant factors. The Panel should also consider the next most severe sanction available and explain why it is not necessary to impose that sanction.</p> <p>4.3.1 and 4.3.2 appear to restate what is put forward under Step 2, rather than adding insight or additional thought.</p>	
7.	Chartered building engineer	No but should title not include disciplinary?	<p>CICAIR considers that the proposed revision to the title "Sanctions Guidance" provides sufficient context to the content of the document.</p> <p>The Disciplinary Protocol is separate to this and refers to the Sanctions Guidance.</p>
Section 2			
8.	Approved Inspector	<p>I would make the following comment: The Steps taken have not closed a loophole of multiple licensing. This is currently the case and is further the case with recent acquisitions. I see little effect of strengthening a sanction when there is the ability for the transfer of projects within a group structure to circumvent the overarching governance. If this issue is not addressed, quite simply there will be more of this exploitation as a means of protectionism, given that level 3 now invokes the ability to restrict scope of work intake and</p>	<p>CICAIR acknowledges the concerns raised in this response regarding multiple licensing but does not consider the Sanctions Guidance is an appropriate place to address these concerns.</p> <p>CICAIR will continue to consider its regulatory approach, whilst feeding into</p>

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		ultimately, in the event of a Level 4 Sanction.	discussions with the new regulator (Building Safety Regulator) about the risks, challenges and benefits surrounding various company models.
9.	Role within the NFCC	2.1 – It is stated it is integral the profession maintains, among members of the public, a well founded confidence in Approved Inspectors. It is considered this should be extended, and explicitly stated, this should be to all their actions may affect i.e., clients, employees (their own and those in premises they are involved in) etc.	It is CICAIR's view that "members of the public" is sufficiently broad to encompass clients and those in the industry including employees, contractors, architects etc.
10.	Approved Inspector	A distinction needs to be made between an Approved Inspector, the company and licenced organisation and individuals or employees within the company. The references to Approved Inspector are not appropriate to be applied wholesale to individuals within an organisation. If CICAIR could 'terminate' the Approval of an Approved Inspector employing dozens of people why can that sanction not be applied to an individual, if that individual was the cause of the sanction with no knowledge or complicity of the company ? Continual references to Approved Inspector implies that every individual employed by an AI licenced company is in fact an 'Approved Inspector', which in my opinion is wrong.	<p>CICAIR's functions are set out in the Building Act 1984, the Building (Approved Inspectors etc.) Regulations 2010 and its Notice of Designation dated 13 March 2014.</p> <p>CICAIR's functions do not include the regulation of employees of an Approved Inspector, it solely regulates Approved Inspectors (bodies or individual practitioners).</p> <p>Under the new regulatory regime and the Building Safety Regulator, individuals will be registered as Building Inspectors which will likely resolve the tension currently experienced with the lack of individual regulation.</p>

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11.	Industry Body	<p>The Guidance envisages changing from a process of three sanction outcomes to four. It is not automatically clear what the purpose is behind this change. However, the effect is to dispense with any outcome which is not flagged on the CICAIR website. In other words, it appears to inhibit and fetter a Panel by removing an outcome option which is currently available.</p> <p>Sanction 1 in the existing system leads to a “caution recorded on file”.</p> <p>Under the proposed system the outcome for Sanction 1 is A Level 1 sanction will be recorded on the Approved Inspector’s CICAIR file along with the relevant Panel’s written decision and terms of the requirement(s) imposed, and made available to any future Panel which upholds a complaint or allegation against an Approved Inspector, prior to the delivery of a sanction.</p> <p>A Level 1 sanction will also be published on the CICAIR website for a period determined by the CICAIR Panel, being no less than six months.</p> <p>This is essentially creating a position whereby, all outcomes which will be published on the CICAIR website for a minimum of six months.</p> <p>There is no right of appeal to a Sanction 1 outcome.</p> <p>8.1 Appeals from a Level 1 sanction imposed by a Complaint or Disciplinary Panel may not be appealed.</p> <p>The procedure does not envisage that the Approved Inspector has any right of appeal against a sanction which will be posted on the CICAIR website for 6 months. Given that Level 1 is considered a</p>	<p>The intention of expanding the scope of the sanctions from three to four is to broaden the powers of a Disciplinary Panel to better deal with the full range of conduct it considers.</p> <p>The types of actions a Panel can take when imposing a Level 1 Sanction are set out in paragraphs 5.5. and new paragraph 5.6 of the draft Guidance and include a letter of warning which has the same effect as a caution.</p> <p>CICAIR recognises the difficulties presented by no right of appeal to a Level 1 Sanction. This accords with the current Sanctions Guidance which provides that a Level 1 Sanction may not be appealed, however acknowledges that the present position is also that a Level 1 Sanction will not be published.</p> <p>Proposed amendments to the Guidance are set out in tracked changes and split the Level 1 Sanction to provide a distinction between the sanction that can be imposed by a Complaint Panel compared to a Disciplinary or Appeal Panel.</p> <p>Consequential amendments will be made to reflect this drafting.</p>

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		"minor breach" this appears to be a disproportionate outcome, which is compounded by a lack of right to appeal.	
12.	Chartered building engineer	2.3.1 to undertake the approval (and on going auditing and re licencing) 2.4.5 should this not be worded to deter initial non compliance not just future non compliance	2.3.1 – CICAIR highlights that 2.3.1 continues and states "through proportionate, targeted and effective regulatory activity", which includes audit and re licensing. 2.4.5 – 2.4.5 is a subparagraph of 2.4 which sets out CICAIR's approach to sanctions. Sanctions are only given in the case of non-compliance, hence why 2.4.5 is directed at future non-compliance.
Section 3 – Overarching considerations of the Indicative Sanctions Guidance			
13.	Approved Inspector	"3.1.1 - There is a question currently about the guidance issued by the BCA. Guidance has been published in recent years without representation from Approved Inspectors. The BCA is subject to current discussions, and the legality and functionality of the BCA are currently being discussed. Therefore, the guidance should be specific to the Code of Conduct Guidance."	The CICAIR Code of Conduct Guidance requires that Approved Inspectors " <i>pay due regard to the guidance attached to the Standards and to the best practice protocols and guidance issued by the Building Control Alliance (BCA) and the Association for Consultant Approved Inspectors.</i> " (paragraph 1.6)
14.	Approved Inspector	S 3: Is there a Statute of Limitations in respect of complaints? What is the procedure if a complaint is made to CICAIR if the Approved Inspector in question is no longer in practice or has had their Licence withdrawn?	CICAIR refers you to the document on its website entitled "CICAIR – Definition of a Complaint" which sets out specified time periods in which complaints must be made. CICAIR is only able to take disciplinary action against an Approved Inspector. If an

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			Approved Inspector is no longer in practice or has had their licence withdrawn, CICAIR is unable to take disciplinary action.
15.	Approved Inspector	S 3 3: Should it be made clear, if that is the intention in 5.30, that the three items are 'OR' not 'AND'?	For clarity CICAIR will add “and” at the end of 5.31.2 (the new 5.30.2).
16.	Approved Inspector	S 3: Very comprehensive and clear about the scope and extent of considerations	Thank you for your contribution.
17.	Approved Inspector	S 3 3: Section 3.3.3 - Whilst I agree sanctions should be imposed where necessary, if the breach was that serious and the resulting sanctions could restrict operations to the extent the AI ceases to operate then should sanctions be to remove the licence rather than the risk of an uncontrolled collapse.	CICAIR recognises that sanctions may place restrictions on an Approved Inspector which may impact their ability to operate. However, it highlights that the guiding principles at paragraph 2.4 are relevant factors to consider when imposing a sanction.
18.	Approved Inspector	S 3 4: Again very comprehensive as to the factors that would be considered in investigating breaches	Thank you for your contribution.
19.	Approved Inspector	S 3 The first act of the CICAIR when receiving a complaint should be to determine what is the complainant expectation of a successful outcome. We see complaints raised with ourselves where the complainant is seeking financial recompense for the work carried out. The CICAIR should be clear, honest and open in their initial contact with the claimant about the extent of the CICAIR remit and that the CICAIR will not award damages, costs or financial recompense to the complainant. The impression from many people who escalate their complaint to the CICAIR is that the CICAIR have	Thank you for your contribution. CICAIR will consider its current complaints processes, which are set out in its Complaints Protocol, to determine whether clarifying correspondence with complainants is required. For clarity on the current process, under its Designation Notice, CICAIR is required to:

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		<p>the ability to award financial recompense should the complaint be upheld. Section 3 should include an early stage notification to the complainant explaining the limitations of the CICAIR role, and requesting that the complainant confirms they understand this before the complaint proceeds.</p> <p>I would also suggest that a fee is charged to the complainant after this stage to filter the serious, meaningful and justifiable complaints from the vindictive and vexatious complaints that we receive.</p> <p>Currently the costs of escalating any complaint is borne by the approved inspector and the CICAIR, and it's a cost free process for the complainant to escalate any complaint. If there is no downside to escalating then people feel they have nothing to lose, and the resources of the CICAIR and the approved inspector can be wasted with responding to unnecessary complaints.</p>	<p><i>(b) ... maintain and publish a Code of Conduct for approved inspectors setting out how approved inspectors should discharge their responsibilities. The Code will include disciplinary procedures and types of sanctions to be applied to approved inspectors who breach the requirements of the Building Act 1984, the Building (Approved Inspectors etc.) Regulations 2010 or the provisions of the Code of Conduct.</i></p> <p><i>(d) The designated body will have a published complaints procedure with the aim of resolving complaints made against approved inspectors in a timely manner. The complaints procedure will include consideration of complaints on the competence of approved inspectors and whether approved inspectors have taken reasonable steps to satisfy themselves that the building work complies with the requirements of the Building Regulations 2010. The procedure will not extend to dealing with complaints arising from dissatisfaction with the judgement made by an approved inspector on whether building work at a particular site complies with the requirements of the Building Regulations.</i></p> <p>The process is not intended to provide financial restitution for complaints made about approved inspectors. CICAIR's current processes are designed to remove</p>

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			<p>those complaints which do not fall within the scope of a complaint (as set out on CICAIR's website) and CICAIR does screen complaints to ensure that they do fall within scope.</p> <p>Furthermore, it is CICAIR's purpose as a professional regulator to uphold the standards expected of the profession, as set out in its Code of Conduct.</p> <p>As a professional regulator it is not appropriate to charge complainants a fee to make a complaint about a regulated entity / sole practitioner.</p> <p>Please see the Complaints Protocol which sets out four stages for complaints received by CICAIR.</p>
20.	Role within the NFCC	3.4.5.7 – It is considered this is positive, as previous failures and sanctions should be part of the process, however, 3.1.3.2 indicates history is not to be taken into account by the panel when determining whether a breach of the code of conduct has occurred. These appear to be in conflict, or at least, should be made clearer.	<p>Aggravating and mitigating features are considered by a Panel after the Panel has made a finding about whether or not the allegation should be upheld, and therefore when it is considering whether or not to impose a sanction.</p> <p>It is correct therefore that when determining whether the breach presently before the Panel has taken place, the Panel should only be considering that breach, not historical conduct.</p>

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			If the Panel consider there has been a breach of the Code, historical conduct is then taken into account when imposing a sanction, as it may be the case that the present conduct is a repeat of previous conduct which would indicate a more serious sanction, subject of course to any relevant mitigation.
21.	Role within the NFCC	3.4.5.17 – Whilst experience may be considered, it is considered competence would be more appropriate, as experience does not necessarily equal competent and ethical practice.	It is CICAIR's view that a breach by an experienced Approved Inspector could be more serious than a less experienced inspector, but in this regard, competence is not relevant as both could have been competent or incompetent in this example.
22.	Role within the NFCC	<p>S 3 3: 5.1.1 – This statement will just as appropriately apply to any level of sanction, and it is considered this is covered in 5.2.1, remove.</p> <p>5.5 – Considering the point made in 1.3³ above, the use of the word 'may' is too open and could lead to the panel doing none of the below, there should be a minimum sanction/action that will be taken.</p> <p>5.19.3.1 – It is acknowledged restricting an Approved Inspectors work regarding existing projects could lead to issues for those projects, however, there should at least be a level of oversight of these work to ensure the issues that led to the original sanction is not</p>	<p>5.1.1 – applies to Complaint Panels only. 5.2.1 - applies to Disciplinary and Appeal Panels.</p> <p>5.5 – CICAIR notes your comment but considers the Guidance is sufficiently clear in this respect and to go further could result in fettering the Panel's discretion to make an independent decision.</p> <p>5.20.3.1⁴ – In imposing a Level 3 sanction, a Panel may also impose any of the</p>

³ See respondent comment 4.

⁴ The new 5.19.3.1

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		<p>being repeated.</p> <p>5.20 – ‘Where restrictions on an Approved Inspector’s approval are necessary, they must be imposed for the shortest possible period of time’, surely this should be the most ‘appropriate’ period of time and reflect the level of sanction?</p> <p>5.21 – Given this allows the time period of the sanction to be reduced, and given the purpose of this guidance (and the Code of Conduct), it is considered this needs to be more robust as is open to interpretation and abuse.</p> <p>5.28 – Again, given the seriousness of the sanction and the application to re-register, it is considered the panel will need to be more than ‘reasonably’ satisfied the applicant meets the requirements.</p>	<p>measures available under Levels 1 and 2, which include an audit (5.12.4⁵), and a report from the AI demonstrating remedial action (5.6.3⁶). Both of these options ensure oversight.</p> <p>5.21⁷ – CICAIR intends to amend 5.20 as follows: “Where restrictions on an Approved Inspector’s approval are necessary, they must be imposed for the shortest possible <u>proportionate</u> period of time, ensuring the Approved Inspector has sufficient time to resolve the issue(s) identified through the complaint and disciplinary process.”</p> <p>5.22⁸ – CICAIR acknowledges your concerns but wishes to highlight the guiding principles available at 2.4. The Sanctions set out in the draft guidance are not intended to be punitive, however of course they may be punitive by their very nature. Instead, the sanctions are imposed to, among other things, protect the public. In this regard, it is CICAIR’s view that this is not open to interpretation or abuse.</p> <p>5.29⁹ – CICAIR notes your concerns and wishes to highlight that the restoration</p>

⁵ The new 5.11.4

⁶ The new 5.6.3

⁷ The new 5.20

⁸ The new 5.21

⁹ The new 5.28

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			process mimics that of a fresh application and is a robust application process to ensure that applicants meet CICAIR's requirements to be licensed.
23.	Role within the NFCC	S 3 4: 6.3 – If this is misunderstood then apologies, this reads as though only '1 side of the story' will be told to the panel which could be misleading, this needs to be clarified to ensure the process remains open, transparent and robust.	CICAIR understands that this comment from the respondent is referring to paragraph 6.3 of the draft Guidance which deals with convictions. In the case of a conviction, a Disciplinary Panel may hear submissions from an Approved Inspector and CICAIR.
24.	Approved Inspector	S 3: Again, there needs to be a clear distinction between a company holding an Approved Inspectors licence and the individuals within the organisations. What if an individual commits a breach, professionally qualified and unknowingly by the company but even after they leave the business and eradicating any continual issue the AI has to go through disciplinary procedures and sanctions without any representation from the individual concerned and the issue has materially been resolved.	See CICAIR response to item 10 above.
25.	Approved Inspector	S 3 4: Again, distinguish between individuals and companies. An Approved Inspectors behaviour ? Okay to assess if an individual but how do you measure the behaviour of a company and not individuals within a company.	See CICAIR response to item 10 above.
26.	Fire Rescue Service	S 3 4: Specifically in relation to section 3.4.3 we disagree that in these circumstances personal mitigation is not a contributing feature. As the Code of Conduct outlines how an individual operating as an AI should/is expected to delegate work to a suitably qualified AI or LABC. With regard to personal mitigation in relation to a individual	Thank you for your contribution. CICAIR wishes to clarify that Approved Inspectors do not delegate to the LABC or to Local Authorities. Approved Inspectors

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		within a Corporate body, it would be assumed that this would be accounted for within that organisations' internal procedures and therefore negates personal mitigation.	are only permitted to delegate work to Professional Consultants or other Approved Inspectors and are not permitted to allow work to be further delegated (Code clause 3.2).
27.	Industry Body	<p>S 3: One of the issues facing a Panel is: what is the repercussion of a conduct issue, ostensibly incurred by an individual Approved Inspector, upon the corporate Approved Inspector who is the individual's employer.</p> <p>Can the conduct of one Approved Inspector lead to a large organisation being removed from the Register and how does the Panel envisage reconciling these competing issues. Under 4.3.3 It is stated that the Panel "satisfy itself that the sanction that it has chosen is proportionate and otherwise appropriate having regard to all relevant factors. The Panel should also consider the next most severe sanction available and explain why it is not necessary to impose that sanction".</p> <p>In other words the Panel must consider not only what they deem to be the most compelling sanction but they are being instructed to consider next most severe sanction too. This is likely to increase the number of Approved Inspectors being considered against a Level 4 sanction.</p> <p>In such circumstances questions for the Panel to consider are likely to include:</p> <p>Is the Approved Inspector likely to comply going forward? and</p> <p>Does the conduct under consideration amount to such that the</p>	<p>See CICAIR response to item 10 above.</p> <p>Considering sanctions in this regard is standard in professional regulation. While a Panel is asked to consider the next ascending sanction and to explain why it is not suitable, this is not the same as imposing a more serious sanction on the AI.</p>

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		<p>Approved Inspector should be withdrawn from the Approved Inspector Register?</p> <p>These will surely inform the Panel in their decision making process.</p> <p>The objective should be to determine whether, due to specific circumstances, the withdrawal from the Register would constitute a disproportionate response in the individual case. Any such finding should be duly reasoned and justified.</p>	
28.	Industry Body	<p>S 3 3: In order to protect the rights of an Approved Inspector there must be a fair balance between the right of the Approved Inspector to the peaceful enjoyment of being a registered Approved Inspector and the interests which the regime seeks to protect; and a fair balance can only be struck by having regard to what CICAIR is seeking to protect or achieve, the way in which it seeks to do that and the extent to which the Approved Inspector can put forward relevant matters in the course of any proceedings.</p> <p>Arguably, being on the Register is a qualified right. Entry on the Register being subject to acceptance by the applicant of certain restrictions and requirements. When considering disciplinary action the Panel will need to consider a number of factors, which are not limited to the impact on the Approved Inspector. The decision has the potential to impact on the rights of others, for example, where the conduct under consideration has given rise to a commercial advantage over other Approved Inspectors (including the question of fair competition).</p> <p>Is an Approved Inspector likely to comply going forward?</p> <p>It is submitted, that the Panel should consider all the relevant negatives and positives when balancing the relevant factors and so</p>	<p>Panels are required to consider aggravating and mitigating features as set out in paragraph 3.4.5. of the draft Guidance.</p>

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		should carry out an assessment of the weight to be given to all the various competing elements. This also applies to consideration of the referred Conduct. The question under consideration are: how likely is it that this Approved Inspector will, in future, operate in compliance with requirements to be on the Register? If the evidence demonstrates that it is unlikely then that will, of course, tend to support a conclusion that the Approved Inspector ought to be removed from the Register. If the evidence demonstrates that the Approved Inspector is very likely to be compliant in the future, then that conclusion may indicate it is not a case where the Approved Inspector ought to be subject to a lesser sanction.	
29.	Approved Inspector	<p>S 3 3: In order to protect the rights of an Approved Inspector there must be a fair balance between the right of the Approved Inspector to the peaceful enjoyment of being a registered Approved Inspector and the interests which the regime seeks to protect; and a fair balance can only be struck by having regard to what CICAIR is seeking to protect or achieve, the way in which it seeks to do that and the extent to which the Approved Inspector can put forward relevant matters in the course of any proceedings.</p> <p>Arguably, being on the Register is a qualified right. Entry on the Register being subject to acceptance by the applicant of certain restrictions and requirements. When considering disciplinary action the panel will need to consider a number of factors, which are not limited to the impact on the Approved Inspector.</p> <p>The decision has the potential to impact on the rights of others, for example, where the conduct under consideration has given rise to a commercial advantage over other Approved Inspectors (including the question of fair competition).</p>	See response to item 28, above.

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		It is submitted, that the Panel should consider all the relevant negatives and positives when balancing the relevant factors and so should carry out an assessment of the weight to be given to all the various competing elements. This also applies to consideration of the referred Conduct. The question under consideration are: how likely is it that this Approved Inspector will, in future, operate in compliance with requirements to be on the Register? If the evidence demonstrates that it is unlikely then that will, of course, tend to support a conclusion that the Approved Inspector ought to be removed from the Register. If the evidence demonstrates that the Approved Inspector is very likely to be compliant in the future, then that conclusion may indicate it is not a case where the Approved Inspector ought to be subject to a lesser sanction.	
30.	Chartered building engineer	S 3: 3.1.2 Agreed but surely there needs to be some continuity and consistency with what other AIs have been sanctioned. ie same offence but 2 different sanction doesn't seem right?	It is CICAIR's view that the aim of the Guidance is to achieve consistency in decision making. CICAIR does not consider it necessary to have a form of precedent system in place as not all conduct is alike and there may be aggravating or mitigating features which indicate a more serious or less serious sanction is warranted. CICAIR also considers it important that each case is decided on its own merits.
31.	Chartered building engineer	S 3 4: 3.4.5 should these be identified as aggravating and mitigating 3.4.5.17 is this relevant the AI is the licence holder and saying that their junior staff dealt with the job and cocked it up isn't mitigation 3.4.5.14 - how will the CICAIR know - [REDACTED] did a No Comment interview to the formal interview by LBC Are you planning to seek the views of others on what sanctions should be sought - ie interested parties?	3.4.5 – these are aggravating and mitigating features 3.4.5.17 – It is intended that this may be either an aggravating or a mitigating feature of conduct, it is not simply one. By way of example only, if the corporate AI has permitted an inexperienced member of staff

	Respondent type	Respondent comments	CICAIR response
			<p>to undertake AI functions without adequate supervision this is aggravating and may warrant a more serious sanction.</p> <p>3.4.5.14 – CICAIR may make enquiries with other law enforcement agencies or regulatory bodies to determine whether the AI in question has co-operated with an investigation.</p> <p>The Disciplinary Protocol does not provide for submissions on sanction for a Panel to apply. It is CICAIR's intention that the responsibility for determining a suitable sanction is a matter for the relevant Panel only.</p> <p>It is not appropriate to source views on sanctions from others as it is crucial that the Panel is independent and free from influence of others.</p>
32.	Approved Inspector	<p>Proportionality</p> <p>The guidance repeatedly refers to whether the breach has been an isolated failure or repeated failings by an Approved Inspector. At no point does the guidance properly address the matter of scale of an approved inspector. It is a statistical certainty that an Approved Inspector dealing with 20,000 projects per annum is likely to have a failure rate multiple times higher than one dealing with 100 projects. Similarly, an Approved Inspector employing 100 surveyors against a single individual approved inspector could of course suffer more errant behaviour. Such matters of scale must be part of the disciplinary panel consideration when evaluating the past record of</p>	<p>It is CICAIR's expectation that large Approved Inspectors should have controls in place to minimise the risks associated with having a large employee base. Furthermore, regardless of the size of a business, the same standards are expected to apply consistently across approved inspectors, however different mechanisms and controls will need to be put in place to ensure the required standards are met.</p>

	Respondent type	Respondent comments	CICAIR response
		the Approved Inspector.	<p>CICAIR intends to make the following amendments:</p> <ul style="list-style-type: none"> - 3.4.5.7 – change the word “repeated” to “systemic” - 5.162¹⁰ – add “or systemic” after repeated
33.	Approved Inspector	<p>Ability of an Approved Inspector to operate</p> <p>[3.3.3] Once a Panel has determined that a certain sanction is necessary, having regard to the overarching principles set out above at 2.4, that sanction must be imposed even where there is an argument that this may lead to difficulties for an Approved Inspector in terms of their ability to operate.</p> <p>A level 4 sanction that results in the suspension of an A.I. license will have profound implications for the satisfactory control of any existing projects that may become subject to a transfer protocol. There are currently hundreds of thousands of projects under Local Authority control which are complete/occupied but not certified and not subject to any active control. This is not a criticism, but a simple fact based on Local authorities’ own statistics and the shortage of human resources therein. To place numerous projects (potentially into the 10’s of thousands) in such jeopardy because of problems experienced potentially in a single one, can in no way be considered to be placing public safety as CICAIR’s primary priority, in fact achieves exactly the opposite of CICAIRs stated objectives.</p>	<p>CICAIR recognises that the withdrawal of an AIs approval may have very serious implications including the reversion of projects to local authorities. It is CICAIR’s view that such a withdrawal will only take place in the most serious of cases and in circumstances where no other sanction is appropriate due to the severity of the conduct. While inevitably, a larger approved inspector will have a larger client base and therefore the impact may be greater on a wider consumer base, it is CICAIR’s responsibility as the regulator of AIs to protect the public to the extent possible. Therefore, when there is a failure by an AI that impacts public protection, regardless of the size of that approved inspector action will be taken and a sanction imposed by a Panel.</p> <p>Please also note that there is no suspension mechanism, solely restrictions</p>

¹⁰ The new 5.15.2

	Respondent type	Respondent comments	CICAIR response
			<p>on approval and withdrawal.</p> <p>As is set out at paragraph 5.33, the Panel may determine when the sanction will take effect to allow the AI time to wind down their business.</p>
Section 4			
34.	Approved Inspector	S 4: Very clear about the processes in determining the most appropriate sanction	Thank you for your contribution.
35.	Fire Rescue Service	S 4: Disagree with the order in terms of decision making. For example, mitigation should be considered at step 3. Rationale for this is that CICAIR should look at the maximum penalty and then consider mitigating factors. Provides clear and concise decision making, reducing risk of challenge from AIs.	CICAIR intends to amend paragraph 4.1 to clarify the decision-making process. The proposed amendments are in the attached amended draft Guidance.
36.	Approved Inspector	<p>S 4: One of the issues facing a Panel is: what is the repercussion of a conduct issue, ostensibly incurred by an individual Approved Inspector, upon the corporate Approved Inspector who is the individual's employer.</p> <p>Can the conduct of one Approved Inspector lead to a large organisation being removed from the Register and how does the Panel envisage reconciling these competing issues.</p> <p>Under 4.3.3 It is stated that the Panel "satisfy itself that the sanction that it has chosen is proportionate and otherwise appropriate having regard to all relevant factors. The Panel should also consider the next most severe sanction available and explain why it is not</p>	See response to items 10 and 27, above.

	Respondent type	Respondent comments	CICAIR response
		<p>necessary to impose that sanction”.</p> <p>In other words the Panel must consider not only what they deem to be the most compelling sanction but they are being instructed to consider next most severe sanction too. This is likely to increase the number of Approved Inspectors being considered against a Level 4 sanction.</p> <p>In such circumstances questions for the Panel to consider are likely to include:</p> <p>Is the Approved Inspector likely to comply going forward? and</p> <p>Does the conduct under consideration amount to such that the Approved Inspector should be withdrawn from the Approved Inspector Register?</p> <p>These will surely inform the Panel in their decision making process. The objective should be to determine whether, due to specific circumstances, the withdrawal from the Register would constitute a disproportionate response in the individual case. Any such finding should be duly reasoned and justified.</p> <p>Experience of the industry, not to mention simple common sense, tells us that the application of sanctions to a large Approved Inspector will not protect the public or the profession, if an individual acting unprofessionally is able to simply move on to their next project or employment situation without any censure, retraining or other corrective action. Neither will it meaningfully deter the individual from future indiscretion.</p> <p>The guidance as drafted extends the doctrine of vicarious liability too far. Whilst employers in these circumstances must take responsibility</p>	

	Respondent type	Respondent comments	CICAIR response
		<p>for the actions of their employees, we must recognise that they cannot entirely control and direct their actions and must be entitled to rely on a reasonable level of professional conduct from an appropriately qualified and experienced professional.</p> <p>It is understood that individual registration of Building Control surveyors is intended in the near future. This guidance should be drafted in such a way as to accommodate these future proposals.</p>	
Section 5 – The sanctions of the Indicative Sanctions Guidance			
37.	Director of a surveying company	“5.7 is a repeat of part of 5.3.”	CICAIR intends to remove the final sentence of paragraph 5.3 as these matters are dealt with in paragraphs 5.7 ¹¹ and 5.8 ¹² .
38.	Approved Inspector	“5.3 Level 1 sanction. If it is to be publically published, the approved inspector should have the right to appeal a level 1 sanction. After all, if a person was to be cautioned for an offence under the Police and Criminal Evidence Act, such information is available to the police authorities but not to the general public. An appeal of caution is possible but improbable.	See response to item 11, above.
39.	Approved Inspector	5.5.4 - Where would a public apology be given? Would this append a public sanction?”	CICAIR will publish public apologies on its website.
40.	Approved Inspector	<p>Section 5.19, Restrictions on an Approved Inspector’s approval of the Indicative Sanctions Guidance</p> <p>“If a license is restricted, it will more than likely end up in the AI</p>	See response to 33, above.

¹¹ The new 5.6

¹² The new 5.7

	Respondent type	Respondent comments	CICAIR response
		closing, and this does not serve the public interest. They will become unable to service existing work. Surely an AI should be put into special measures, similar to any other public body that requires some oversight in certain circumstances?"	
41.	Approved Inspector	<p>Level 4 Sanction - Unacceptable Breach of the Code of Conduct section of the Indicative Sanctions Guidance</p> <p>"In paragraph 5.33.2 - the reference to the BCA policy note should be removed. It should be sufficient to follow the legal processes within Part 2 of the Act, and the AI Regs."</p>	See above response to item 13.
42.	Approved Inspector	<p>Lv 1 Breach: Level 1 Sanction.</p> <p>I strongly disagree with the structure of this sanction and it is inappropriate..</p> <p>With the proposals to publicly display a minor breach for level one is inappropriate-</p> <p>It will cause confusion & inconsistency of panel outcome decisions. It will give the reputation of the profession of Approved Inspectors the wrong impression within the public domain. It will damage the reputation of Approved Inspectors -There will be multiple publications for minor breaches It will damage the reputation of CICAIR and give the impression that the integrity and robust auditing measures are not working. Therefore, in summary: It is wrong that a level 1 sanction is publicly displayed and if that is the case - It is wrong that a level 1 sanction cannot be appealed.</p>	<p>See response to item 11, above.</p> <p>By way of example only, many professional regulators publish cautions, warnings, reprimands and rebukes on their websites such as the Architects Registration Board, the Solicitors Regulation Authority, and the Nursing and Midwifery Council. In each instance, all outcomes which are reached by way of a decision-making panel comparable to the Disciplinary Panel CICAIR has, are published.</p>
43.	Approved Inspector	<p>Lv 2 Breach: I am in agreement with this sanction as there is the right of appeal. The minimum sanction is appropriate at a minimum</p>	Thank you for your contribution.

	Respondent type	Respondent comments	CICAIR response
		of 1 year.	
44.	Approved Inspector	<p>Lv 3 Breach: In the main this is the new moderation sanction between that of the current level 2 and that of license removal of level 3. I am in agreement for the reason that I believe the current level 2 sanction does not necessarily correct the remedial actions necessary by simply publicly displaying the sanction and additionally, with this sanction as there is the right of appeal. The minimum sanction is appropriate at a minimum of 2 years. .</p> <p>Please Note my comments set out within 2)¹³ above regarding multiple licensed Approved Inspectors.</p>	<p>Thank you for your contribution.</p>
45.	Approved Inspector	<p>S 5 19: I Have the same comments in respect of 5.19, Restriction as set out within 11)¹⁴ above, namely:</p> <p>In the main this is the new moderation sanction between that of the current level 2 and that of license removal of level 3. I am in agreement for the reason that I believe the current level 2 sanction does not necessarily correct the remedial actions necessary by simply publicly displaying the sanction and additionally, with this sanction as there is the right of appeal. The minimum sanction is appropriate at a minimum of 2 years. .</p> <p>Please Note my comments set out within 2)¹⁵ above regarding multiple licensed Approved Inspectors.</p>	<p>Thank you for your contribution.</p> <p>Please see response to item 8, above.</p>

¹³ See respondent comment 8.

¹⁴ See respondent comment 44

¹⁵ See respondent comment 8.

	Respondent type	Respondent comments	CICAIR response
46.	Approved Inspector	<p>Lv 1 Breach: Please also see our comments to section 16¹⁶ of the consultation 'Appeals'.</p> <p>██████ supports all levels of sanctions being published on the website. However, we would further comment that if this is the case that the appeals process should allow all levels of sanction imposed by a complaint or disciplinary panel to be appealed, including level 1. It would also be beneficial to publish the sanction on the website with a degree of context, i.e., company size, volume and type of work etc. to provide more context in terms of the percentage of overall work that results in complaints.</p>	Please see response to item 11, above.
47.	Approved Inspector	<p>Lv 2 Breach: 5.11.2 makes comment in relation to individual(s), could this encourage the corporation not to take responsibility for an individual staff member and encourage blame of the individual and therefore potentially neglect the route of the problem.</p> <p>S 5 19: Under 5.19.3 how will CICAIR ensure that existing projects of the type the AI is temporarily able to take on will be serviced correctly?</p> <p>It would be beneficial for additional guidance to be produced on how the time frame in section 5.19.2 and 5.20 are decided upon by the panel.</p>	<p>5.11.2 – Please see response to item 10, above.</p> <p>5.19.3 – Please see response to item 22, above.</p> <p>5.19.2 / 5.20 – CICAIR considers that additional guidance would fetter the discretion of the Panel and impair their independent decision making.</p>
48.	Approved Inspector	<p>Lv 4 Sanction: Section 5.29 would benefit from clarification as it is unclear if a conviction under section 57 of the Building Act 1984 would result in a suspension from the register. It is ██████ view that a conviction under section 57 should result in an instant suspension from the register.</p>	CICAIR has a discretionary power under Regulation 6(4) of the Building (Approved Inspectors etc.) Regulations 2010, to withdraw an AI's approval upon a conviction under section 57 of the Building Act 1984. This means that CICAIR can

¹⁶ See respondent comment 87.

	Respondent type	Respondent comments	CICAIR response
			<p>withdraw an approval, but does not have to do so. This is set out in paragraph 5.27.2.</p> <p>Recognising the severity of withdrawing an AI's approval, CICAIR's disciplinary process allows for such a conviction to be considered by a Disciplinary Panel who may then impose a sanction considered appropriate.</p>
49.	Approved Inspector	Lv 1 Breach: section 5.7 repeats part of 5.3. No other comments	See response to item 37, above.
50.	Approved Inspector	Lv 2 Breach: scope, limitations and extent of sanctions clear	Thank you for your contribution.
51.	Approved Inspector	<p>Lv 3 Breach: Restrictions on Approval are appropriate which serious breaches have occurred.</p> <p>S 5 19: Restrictions outlined in 5.19.3.2 are appropriate but not sure whether 5.19.3.1 could restrict a company's ability to trade. Would it not become 'dormant' if there is no 'new income' and therefore render it unable to trade, in effect cancelling the licence. Whilst I agree with the restrictions in principle, could 5.19.3.1 lead to an AI ceasing to operate in an uncontrolled or unmanaged manner? Would an alternative be to limit the amount of new work either by volume or cost on say a monthly or quarterly basis to a level (based on previous income/workload over a period of time) that is an effective sanction but avoids the risk of an AI collapsing and its implications</p>	<p>5.20.3¹⁷ – Please see response to item 22, above.</p> <p>CICAIR recognises that restrictions on a licence may result in operating issues for an AI but reiterates the importance of public protection in this regard.</p>

¹⁷ The new 5.19.3

	Respondent type	Respondent comments	CICAIR response
		on existing projects.	
52.	Approved Inspector	Lv 4 Sanction: scope, limitations and extent of sanctions clear	Thank you for your contribution.
53.	Approved Inspector	<p>Lv 1 Breach: A level 1 sanction recorded on an AI's file indefinitely appears disproportionate and not in the public's interest if the staff, culture, ownership, systems and procedures have substantially changed.</p> <p>A level 1 sanction, letter or advice or recommendation appearing does not fit the bill of being a sanction. This should be the option where a sanction is not appropriate.</p>	Thank you for your contribution. It is CICAIR's view that it is important that a comprehensive list of sanctions imposed on an AI should be maintained. If the culture, ownership, systems and procedures have changed substantially since prior instances of conduct, but new instances of conduct arise, it may still be a relevant factor for a Panel to consider. That said the AI may choose to highlight these differences to the Panel considering a sanction in their case.
54.	Approved Inspector	<p>Lv 2 Breach: This needs to be linked to any future registration of individuals.</p> <p>S 5 19: 5.19.3.1 & 2 - These sanctions appear punitive and not in the public's interest ? The AI can still undertake its duties on certain projects (thus proving it is still considered fit and proper) but not on others as a punishment, but how is this in the public's interest if still operating ?</p>	<p>See above response to item 10, above.</p> <p>Sanctions are not intended to be punitive, rather designed to protect the public and ensure confidence in the profession. CICAIR does however recognise that sanctions may be punitive by their very nature.</p> <p>The restrictions set out in 5.20.3¹⁸ may be applied in circumstances such as where the AI does not have the resources to service new projects which was an issue resulting</p>

¹⁸ The new 5.19.3

	Respondent type	Respondent comments	CICAIR response
			in the disciplinary proceedings, or in the case of the AI lacking the necessary expertise to deal with commercial projects or high-volume domestic projects, but having sufficient expertise to work on small domestic projects.
55.	Approved Inspector	Lv 4 Sanction: Withdrawal of Licence notification would, in my opinion (except in the cases where an AI could readily transfer work across to another AI) necessitate the immediate closure of a business and result in an uncooperative transfer of work in most cases. Directors would be obliged by the Companies Act to enter into administration or similar procedures as soon as they are aware that they can not remain solvent (no new work being submitted through the business).	See response to item 33, above.
56.	Fire Rescue Service	S 5: With reference to answer for Q7, wording of the document and order that it is presented is agreeable. However, again, disagree with order in which sanctions should be considered.	See response to item 35, above.
57.	Fire Rescue Service	Lv 1 Breach: In relation to a Level 1 Sanction, we believe that the need to verbally apologise to an individual or corporate body/organisation is not a suitable sanction from CICAIR as we believe that this would typically or should typically be covered by the AIs internal complaints process, which as per your guidance, should have been exhausted prior to approaching CICAIR.	It is CICAIR's view that this is an appropriate sanction and commonly not dealt with through an Approved Inspectors complaints process, particularly where an Approved Inspector has not recognised that they have breached the Code of Conduct.
58.	Fire Rescue Service	Lv 2 Breach: Under Level 2 Sanctions, sections 5.11.2 and 5.11.3 should be removed. Instead section 5.11.4 should be the initial sanction, used as an investigative process to determine further sanctions as/when/if required. Sections 5.11.2 and 5.11.3 should be addressed via the AIs internal complaints procedure as standard. We do not feel that it is CICAIR's responsibility to identify and determine	It is CICAIR's view that it is its responsibility to identify and determine training needs / requirements for AIs, particularly where there has been a competency issue resulting in a referral to a Disciplinary Panel.

	Respondent type	Respondent comments	CICAIR response
		training needs/requirements for AIs.	<p>The options presented under 5.12¹⁹ are available to the Panel who may impose one or more of them on the AI.</p> <p>In this regard, see clause 2.4 of the Code of Conduct for Approved Inspectors.</p>
59.	Fire Rescue Service	<p>Lv 3 Breach: With reference to our response to Q10, if section 5.11.4 were to be moved to sit within the Level 3 Sanction, this would reduce the quantity of sanctions/steps involved and provide greater clarity to AIs and other key stakeholders (i.e. our Organisation). As per our previous response, we feel that an audit of the AI should be the initial sanction.</p> <p>S 5 19: Section 5.19 could provide more detailed clarification on the process of what happens in the event that restrictions are imposed on an AI's approval. For example, where will this be published on CICAIR's website. How will this be communicated to statutory consultees? Clarity on the length of time that an AI is restricted or has been restricted for should be visible on the CICAIR website.</p>	<p>See response to item 58, above.</p> <p>5.20²⁰ – paragraph 5.25²¹ sets out that a level 3 sanction will be published on CICAIR's website.</p>
60.	Fire Rescue Service	Lv 4 Sanction: Under a Level 4 Sanction where AIs are withdrawn and removed, the guidance provides little/no information on the control of registration i.e. how to prevent a sanctioned/withdrawn company from re-registering under a different company name.	See response to item 8, above.
61.	Approved Inspector	Lv 1 Breach: Level 1 sanctions will require the approved inspector to address any shortcomings found by CICAIR to their satisfaction following the finding. Furthermore, at the time of the next audit of the	<p>See response to item 53, above.</p> <p>See response to item 32, above.</p>

¹⁹ The new 5.11

²⁰ The new 5.19

²¹ The new 5.24

	Respondent type	Respondent comments	CICAIR response
		<p>approved inspector, the audit panel will consider the effectiveness of the measures put in place by the approved inspector to ensure there has been no recurrence of the failure. In these circumstances it is reasonable that a level one sanction can then be removed from the record of the approved inspector at this point and not considered in any future disciplinary panel deliberations. By this time it is unrealistic to assume that a previous level 1 sanction will have a meaningful relationship with a future complaint after what is likely to be a substantial volume of completed projects, evolution of staff and systems in the interim.</p> <p>In the meantime, if the Approved Inspector is to be held to account in future cases, then level 1 sanctions should rightly be subject to appeal. This will also avoid the perception that level 1 sanctions are a convenient penalty to satisfy a complainant and dispose easily of the case without any recourse from either party.</p> <p>Proportionality The guidance repeatedly refers to whether the breach has been an isolated failure or repeated failings by an approved inspector or are repeated or ongoing issue.</p> <p>At no point does the guidance properly address the matter of scale of an approved inspector. It is a statistical certainty that an approved inspector dealing with 20,000 projects per annum will have a failure rate multiple times higher than one dealing with 100 projects. Similarly, an Approved Inspector employing 100 surveyors against a single individual approved inspector will of course suffer more errant behaviour. Such matters of scale must be part of the disciplinary panel consideration when evaluating the past record of the proved inspector.</p>	
62.	Approved Inspector	Lv 4 Sanction: There is a major difference between acting	It is CICAIR's view that serious instances of

	Respondent type	Respondent comments	CICAIR response
		<p>deliberately or through incompetence. A level 4 should be considered only for the former circumstance.</p> <p>In the instance where a member of staff of an approved inspector acts in this way, this should be considered an unacceptable breach only where this has been clearly evidenced as a systemic fault or where the issue has been deliberately ignored by the corporate approved inspector.</p> <p>Where the “other serious civil, criminal or regulatory offence” is committed by “a director, a staff member or others working on their behalf.” The breach should be unacceptable only where there is evidence to suggest that the conduct is systemic or that the approved inspector colluded with such behaviour.</p> <p>Where there has been inappropriate personal conduct by the representative of the Approved Inspector, the breach should only be considered as level 4 if the behaviour is systemic or is condoned.</p> <p>For the most serious cases that may result in a level 4 sanction, it essential that the case is referred to an independent disciplinary panel as is usual practice for RICS. It cannot be right that a large, approved inspector can be effectively put out of business by a competitor in the sector. This is particularly important where the competitor may derive direct advantage from such an outcome as could certainly be the case in such a small pool of companies. CICAIR puts great emphasis on the avoidance by Approved Inspectors of situations in which a perceived conflict of interest may arise. This is undoubtedly such a situation and it is clear that public confidence in an entirely impartial outcome could not be assured.</p>	<p>incompetence which have had significant implications for the public or others in the industry may require a level 4 sanction.</p> <p>CICAIR agrees that the most serious cases should be heard and determined by an independent Disciplinary Panel convened in accordance with its Disciplinary Protocol.</p>
63.	Chartered building engineer	S 5: How do the sanctions tie into the audits and shouldn't the audit findings sit as evidence in the sanction hearing to give the wider	If an audit has taken place which gives rise to conduct concerns and disciplinary

	Respondent type	Respondent comments	CICAIR response
		perspective of the AI operational standards and overall worthiness. 5.33.1 this is not relevant - why should a big AI get away with having a less serious punishment/sanction than a smaller AI. the size and market position is not relevant. AQre you seriously saying that big AIs can cock up and get away with it a smaller one cant.!	proceedings, the audit findings can and will sit as evidence before the Disciplinary Panel when determining the matter. The factors set out at 5.34.1 ²² come into play after a Disciplinary Panel has decided that the only appropriate sanction is withdrawal of the Approved Inspector's approval. These factors are important to consider from a public interest perspective to allow sufficient time for the transfer of live projects to other building control bodies (AIs or local authorities) to ensure minimal disruption to consumers to the extent possible. This may mean, for example, that the withdrawal takes effect in 6 months from the date of the Disciplinary Panel's decision to allow projects to be transferred.
64.	Chartered building engineer	Lv 1 Breach: See above in 8 ²³	See response to item 61, above.
65.	Chartered building engineer	Lv 2 Breach: see above in 8 ²⁴	See response to item 61, above.

²² The new 5.33.1

²³ Item #63

²⁴ Item #63

	Respondent type	Respondent comments	CICAIR response
66.	Chartered building engineer	<p>Lv 3 Breach: See above in 8²⁵ What about suspending taking on new work</p> <p>S 5 19: Should also be geographical to limit exposure of consultants working miles away from AI offices</p>	<p>See response to item 61, above.</p> <p>5.20²⁶ – Please see paragraph 5.19.2²⁷, which expressly provides that a Panel may impose a restriction on the Approved Inspector's approval including the location of projects.</p> <p>For clarity, CICAIR intends to add a new 5.20.3.3²⁸ to set out the geographical limit restriction by way of an example.</p>
67.	Chartered building engineer	<p>Lv 4 Sanction: Need to make sure that Director of one AI can't move to another AI when they lose the licence. The CICAIR needs to be much clearer that Directors of AIs need to be trustworthy and characters with high morals not fly by night sharks.</p>	<p>See response to 8, above.</p> <p>Please see CICAIR's Substantive Change Protocol which sets out the requirements to notify CICAIR of Substantive Changes which CICAIR must approve (this includes the appointment of new directors).</p>
68.	Approved Inspector	<p>Withdrawal of Approval under Regulation 6.4</p> <p>[5.27.2] Regulation 6(4) gives CICAIR the discretion to withdraw the approval of an Approved Inspector where it has been convicted of an offence under section 57 of the Building Act 1984. Withdrawal under regulation 6(4) is for a period of five years, beginning with the date of conviction.</p> <p>It is important to remember that this legislation was drafted some</p>	<p>CICAIR notes that Regulation 6(4) is discretionary and highlights the importance of the Approved Inspector engaging in the disciplinary process which includes participating in hearings and ensuring all relevant factors including aggravating and mitigating features of conduct are before the Panel when it is making its</p>

²⁵ Item #63

²⁶ The new 5.19

²⁷ The new 5.18.2

²⁸ The new 5.20.3.3

	Respondent type	Respondent comments	CICAIR response
		40 years ago when Approved Inspectors in their current large scale had not been envisaged and such action was anticipated to be in respect of the actions of an individual or very small corporate Approved Inspector where the principal was likely to be intrinsically involved in the failures of the entity. This is no longer the case, and it is essential that the disciplinary panel have awareness of the scale of the A.I., the seniority of the perpetrator and other circumstances of the case in recommending an appropriate sanction.	determinations.
69.	Approved Inspector	<p>Serious Cases For the most serious cases that may result in a level 4 sanction, it essential that the case is referred to an independent disciplinary panel as is usual practice for RICS. It cannot be right that a large, approved inspector can be effectively put out of business by a competitor in the sector. This is particularly important where the competitor could derive direct commercial advantage from such an outcome as could certainly be the case in such a small pool of companies. CICAIR puts great emphasis on the avoidance by Approved Inspectors of situations in which a perceived conflict of interest may arise. This is undoubtedly such a situation and it is clear that public confidence in an entirely impartial outcome could not be assured.</p> <p>Additional proportionate measures Monitoring & reporting prior to disciplinary action – Improved dialogue, meetings with CICAIR and BSR to discuss disciplinary options Financial measures fines – Fines for breaches Competencies –individual licenses/certificate to practicing/with failures by the individual reported to BSR and Professional bodies</p>	<p>See response to item 62, above. As with all professional regulators, it is very important that Disciplinary Panels include a member of the profession to support the panel decision making, as the member of the profession has knowledge that the other decision makers do not have about the intricacies of the profession. By way of example only, this includes the Architects Registration Board, Solicitors Regulatory Authority, Bar Standards Board, Nursing and Midwifery Council, General Dental Council and a multitude of other professions.</p> <p>CICAIR welcomes proactive engagement from AI where conduct issues arise.</p> <p>CICAIR does not have the necessary statutory power to impose fines on AI.</p> <p>See response to item 10, above.</p>

	Respondent type	Respondent comments	CICAIR response
70.	Approved Inspector	<p>This is a much better set of guidance an options – my only comment would be that if a level 1 cannot be appealed I would be against it being published. It could remain on file but not appear in public domain so it can still be referenced in event of a repeat offence.</p> <p>There is also a danger that level 1 could be issued out too frequently if we are not careful almost as a default outcome for any complaint. I would like to ensure that it would have the same gravity as previous level 1 sanction's and assume that can be dealt with via the training.</p>	See response to item 11, above.
Section 6			
71.	Approved Inspector	<p>Section 6, Convictions of the Indicative Sanctions Guidance</p> <p>"It would appear that the best insurance an Approved Inspector can have is owning more than one license. The CICAIR can remove one but seems reasonably relaxed when watching an approved inspector transfer all of its current work to another couple of duly licensed bodies. Yet the management teams are the same and allowed the offence to be committed in the first place.. Therefore, if the information received shows that the action that led to a conviction was a rogue individual, and the individual actions were reckless or fraudulent, should the AI be allowed to continue? I guess this can be heard in the submissions?"</p>	See response to item 8, above.
72.	Approved Inspector	S 6: Could more commentary be provided on individuals who may get a civil, criminal or regulatory offence such as only those considered to bring the AI or industry into disrepute, or could undermine their ability to comply with the code of conduct etc.	It is CICAIR's view that further commentary is not necessary, but such matters can be taken into account by a Panel as aggravating or mitigating features.
73.	Fire Rescue Service	S 6: Convictions should be clearly visible or signposted on the CICAIR website.	CICAIR will publish outcomes from Disciplinary and Appeal Hearings as is set out in the draft Guidance and relevant Protocols.

	Respondent type	Respondent comments	CICAIR response
			It is not appropriate that CICAIR publicises convictions of those it regulates where disciplinary processes have not been followed.
74.	Chartered building engineer	<p>S 6: Yes the convictions of an AI should be recorded against individual Directors to prevent them from hiding under the Corporate umbrella</p> <p>6.3 Dont understand this - why can't CICAIR look behind the conviction - they must.</p>	<p>CICAIR does not consider this appropriate. The scope of CICAIR's Designation Notice is to regulate AIs, not the individuals within them. It is therefore not within CICAIR's remit to take action against individual directors of an AI.</p> <p>6.3 – Paragraph [32] of <i>Wary v GOC</i> [2020] EWHC 3409 (QB) provides that where a statutory provision is made for disciplinary bodies to attach professional consequences to a criminal conviction, the effect of the statute has been to preclude the practitioner from denying the truth of any facts necessarily implied in the conviction. In this regard, CICAIR's Panels will not be undertaking a review of the factual position resulting in the conviction.</p>
Section 7			
75.	Approved Inspector	<p>Section 7, Sanction recording, notification and publication of the Indicative Sanctions Guidance</p> <p>"If a level 1 sanction is to be published on the CICAIR website it could have a reasonable impact on the business of the AI and so it would perhaps be fair to allow an appeal against level 1 sanctions."</p>	See response to item 11, above.

	Respondent type	Respondent comments	CICAIR response
76.	Approved Inspector	<p>Section 7, Sanction recording, notification and publication of the Indicative Sanctions Guidance</p> <p>“Local Authority Building Control Limited is a private sector body which is in direct competition with AI. The sanction notification should not be notified to it, but to all Council's Building Control Teams. What is a relevant professional or regulatory body?</p> <p>7.4 - Why should a Level 1 sanction be published and publically available? The equivalent in criminal law is not. If it is publically published, an appeal should be allowable against it, as in criminal law.”</p>	<p>CICAIR will change the notification requirements in 7.1 to include notification to local authority building control.</p> <p>A relevant professional or regulatory body may include RICS, ARB, the BSR.</p> <p>See response to item 11, above.</p>
77.	Independent adjudicator	<p>Section 7, Sanction recording, notification and publication of the Indicative Sanctions Guidance</p> <p>“Wrong apostrophe point 7.3 line 2.”</p>	<p>Apostrophe to be removed.</p>
78.	Approved Inspector	<p>S 7: I fundamentally disagree with this in respect of the level 1 sanction, as set out above in 9)²⁹ above, namely: and that Level 1 (minor breach) sanctions for minor breaches are reported to other parties. it cannot be right to issue a Sanction without the right of appeal. Level 1 Sanction.</p> <p>I strongly disagree with the structure of this sanction and it is inappropriate..</p>	<p>See response to item 11, above.</p>

²⁹ See item #42

	Respondent type	Respondent comments	CICAIR response
		<p>With the proposals to publicly display a minor breach for level one is inappropriate-</p> <p>It will cause confusion & inconsistency of panel outcome decisions. It will give the reputation of the profession of Approved Inspectors the wrong impression within the public domain. It will damage the reputation of Approved Inspectors -There will be multiple publications for minor breaches It will damage the reputation of CICAIR and give the impression that the integrity and robust auditing measures are not working. Therefore, in summary: It is wrong that a level 1 sanction is publicly displayed and if that is the case - It is wrong that a level 1 sanction cannot be appealed.</p>	
79.	Approved Inspector	<p>S 7: Section 7.1 contains the statement ‘i.e. accepting or rejecting statutory documentation, are notified to Local Authority Building Control Body’ – Clarification would be beneficial on who within the Local Authority Building Control would be notified e.g. LABC, individual local Authorities etc? Additionally when would the bodies mentioned in 7.1 be notified? Would it be on a is this a case by case basis, or within a set time frame e.g. quarterly? .</p>	<p>See response to item 76, above.</p> <p>CICAIR intends to notify the other bodies as soon as practicable after the sanction is imposed.</p>
80.	Approved Inspector	<p>S 7: The permanent recording of sanctions on a companies record does not appear appropriate in every case.</p>	See response to item 53, above.
81.	Fire Rescue	<p>S 7: Under Section 7.1, this requirement should be extended to</p>	CICAIR will discuss this with the relevant Association to determine the best way to

	Respondent type	Respondent comments	CICAIR response
	Service	inform other statutory consultees (i.e. Fire and Rescue Authority/Service). This should be done so by CICAIR as opposed to relying on the LABC to communicate this information.	<p>approach such notifications</p> <p>CICAIR will amend the draft guidance to include that it will also notify other relevant authorities.</p>
82.	Industry Body	<p>S 7: All sanctions will remain permanently on an Approved Inspector's record but will only be publicly available for the period that a CICAIR panel determines in accordance with the guidelines outlined in accordance with this Guidance. All sanctions will be made available to any future Panel which upholds a complaint or allegation against an Approved Inspector, prior to the delivery of any sanction.</p> <p>3.1.3 Prior conduct and the complaint or disciplinary history of an Approved Inspector can assist a Panel in determining a fair sanction and ensuring proportionality and consistency of decision making. However:</p> <p>3.1.3.1the previous complaint or disciplinary history of an Approved Inspector will only be made available to a Panel once it has determined whether or not the Approved Inspector has breached the Code of Conduct; and</p> <p>3.1.3.2the previous complaint or disciplinary history of an Approved Inspector are not to be taken into account by a Panel when determining whether a breach or breaches of the Code of Conduct have occurred in relation to any specific allegation under consideration.</p> <p>Consider Level 1 sanctions will require the approved inspector to address any shortcomings found by CICAIR to their satisfaction following the finding. Furthermore, at the time of the next audit of the approved</p>	<p>See response to item 53, above.</p> <p>See response to item 32, above.</p> <p>See response to item 33, above.</p>

	Respondent type	Respondent comments	CICAIR response
		<p>inspector, the audit panel will consider the effectiveness of the measures put in place by the approved inspector to ensure there has been no recurrence of the failure. In these circumstances it is reasonable that a level one sanction can then be removed from the record of the approved inspector at this point and not considered in any future disciplinary panel deliberations. By this time it is unrealistic to assume that a previous level 1 sanction will have a meaningful relationship with a future complaint after what is likely to be a substantial volume of completed projects, evolution of staff and systems in the interim.</p> <p>In the meantime, if the Approved Inspector is to be held to account in future cases, then level 1 sanctions should rightly be subject to appeal. This will also avoid the perception that level 1 sanctions are a convenient penalty to satisfy a complainant and dispose easily of the case without any recourse from either party.</p> <p>Proportionality</p> <p>The guidance repeatedly refers to whether the breach has been an isolated failure or repeated failings by an approved inspector or are repeated or ongoing issue.</p> <p>At no point does the guidance properly address the matter of scale of an approved inspector. It is a statistical certainty that an approved inspector dealing with 20,000 projects per annum will have a failure rate multiple times higher than one dealing with 100 projects. Similarly, an Approved Inspector employing 100 surveyors against a single individual approved inspector will of course suffer more errant behaviour. Such matters of scale must be part of the disciplinary panel consideration when evaluating the past record of the proved inspector.</p> <p>Ability of an Approved Inspector to operate</p> <p>1.1.1 Once a Panel has determined that a certain sanction is</p>	

	Respondent type	Respondent comments	CICAIR response
		<p>necessary, having regard to the overarching principles set out above at 2.4, that sanction must be imposed even where there is an argument that this may lead to difficulties for an Approved Inspector in terms of their ability to operate.</p> <p>A level 4 sanction that results in the suspension of an A.I. license will have profound implications for the satisfactory control of any existing projects that may become subject to a transfer protocol. There are currently hundreds of thousands of projects under Local Authority control which are complete and not subject to any active control. This is not a criticism, but a simple fact based on Local authorities' own statistics and the shortage of human resources therein. To place numerous projects (potentially into the 10's of thousands) in such jeopardy because of problems experienced in a single one, is a glib denial of reality and can in no way be placing public safety as CICAIR's primary priority.</p> <p>Withdrawal of Approval under Regulation 6.4</p> <p>1.1.2 Regulation 6(4) gives CICAIR the discretion to withdraw the approval of an Approved Inspector where it has been convicted of an offence under section 57 of the Building Act 1984. Withdrawal under regulation 6(4) is for a period of five years, beginning with the date of conviction.</p> <p>It is important to remember that this legislation was drafted some 40 years ago when Approved Inspectors in their current large scale had not been envisaged and such action was anticipated to be in respect of the actions of an individual or very small corporate Approved Inspector where the principal was likely to be intrinsically involved in the failures of the entity. This is no longer the case, and it is essential that the disciplinary panel have awareness of the scale of the A.I., the seniority of the perpetrator and other circumstances of the case</p>	

	Respondent type	Respondent comments	CICAIR response
		<p>in recommending an appropriate sanction.</p> <p>Serious Cases For the most serious cases that may result in a level 4 sanction, it essential that the case is referred to an independent disciplinary panel as is usual practice for RICS. It cannot be right that a large, approved inspector can be effectively put out of business by a competitor in the sector. This is particularly important where the competitor may derive direct advantage from such an outcome as could certainly be the case in such a small pool of companies. CICAIR puts great emphasis on the avoidance by Approved Inspectors of situations in which a perceived conflict of interest may arise. This is undoubtedly such a situation and it is clear that public confidence in an entirely impartial outcome could not be assured.</p>	
83.	Approved Inspector	<p><u>7 Sanction recording, notification and publication</u></p> <p>7.4 All sanctions will remain permanently on an Approved Inspector's record but will only be publicly available for the period that a CICAIR panel determines in accordance with the guidelines outlined in accordance with this Guidance. All sanctions will be made available to any future Panel which upholds a complaint or allegation against an Approved Inspector, prior to the delivery of any sanction.</p> <p>3.1.3 Prior conduct and the complaint or disciplinary history of an Approved Inspector can assist a Panel in determining a fair sanction and ensuring proportionality and consistency of decision making. However:</p> <p>3.1.3.1 the previous complaint or disciplinary history of an Approved Inspector will only be made available to a Panel once it has determined whether</p>	<p>See response to item 53, above.</p> <p>See response to item 32, above.</p> <p>See response to item 11, above.</p>

	Respondent type	Respondent comments	CICAIR response
		<p>or not the Approved Inspector has breached the Code of Conduct; and</p> <p>3.1.3.2the previous complaint or disciplinary history of an Approved Inspector are not to be considered by a Panel when determining whether a breach or breaches of the Code of Conduct have occurred in relation to any specific allegation under consideration.</p> <p>Consider</p> <p>Level 1 sanctions will require the approved inspector to address any shortcomings found by CICAIR to their satisfaction following the finding. Furthermore, at the time of the next audit of the approved inspector, the audit panel will consider the effectiveness of the measures put in place by the approved inspector to ensure there has been no recurrence of the failure. In these circumstances it is reasonable that a level one sanction can then be removed from the record of the approved inspector after 5 years and not considered in any future disciplinary panel deliberations beyond this. By this time, it is unrealistic to assume that a previous level 1 sanction will have a meaningful relationship with a future complaint after what, by then, is likely to be a substantial volume of successfully completed projects and the evolution of staff and systems in the interim.</p> <p>In the meantime, if the Approved Inspector is to be held to account in future cases, then level 1 sanctions should rightly be subject to appeal. This will also avoid the perception that level 1 sanctions are a convenient penalty to satisfy a complainant and dispose easily of the case without any recourse from either party.</p>	
Section 8			

	Respondent type	Respondent comments	CICAIR response
84.	Approved Inspector	<p>Section 8, Appeals of the Indicative Sanctions Guidance</p> <p>"8.1 - Level 1 sanctions in my opinion, if publically published, should be subject to the same appeal process as the other sanctions. This is the case in criminal law cautions. I recognise that such an appeal may result in a sanction being moved up the scale to a higher level sanction.</p>	See response to item 11, above.
85.	Independent adjudicator	<p>Section 8, Appeals of the Indicative Sanctions Guidance</p> <p>"8.1 needs rewording."</p>	See response to item 11, above.
86.	Approved Inspector	<p>S 8: It is wrong that a level 1 sanction is publicly displayed and if that is the case - It is wrong that a level 1 sanction cannot be appealed.</p>	See response to item 11, above.
87.	Approved Inspector	<p>S 8 [REDACTED] would comment that the appeals process should allow all levels of sanction imposed by a complaint or disciplinary panel to be appealed, including level 1. It would also be beneficial to publish the sanction on the website with a degree of context ie.i.e. Company size, volume and type of work etc to provide more context in terms of the percentage of overall work that results in complaints.</p> <p>It would be beneficial if criteria/threshold for the grounds of an appeal were clearly outlined in either this document or other appropriate document e.g., the CIC Approved Inspectors Register (CICAIR) Disciplinary Appeals Protocol.</p>	<p>See response to item 11, above.</p> <p>CICAIR will consider whether it is appropriate and necessary to revise the Disciplinary Appeals Protocol to specify criteria / threshold for grounds of appeal.</p>
88.	Approved Inspector	<p>S 8: 8.1 is this saying there are no appeals to level 1 sanctions or appeals cannot be appealed?</p>	See response to item 11, above.

	Respondent type	Respondent comments	CICAIR response
89.	Approved Inspector	S 8: 8.1 Maybe just me but doesn't make sense. Should this be outcomes or decisions made from a Level 1 sanction can not be appealed ? If a Level 1 sanction can not be appealed then I think that is wrong, an appeal process should be available. Especially where a sanction is imposed on a lifetime record.	See response to item 11, above.
90.	Fire Rescue Service	S 8: Assuming that amendments are made in accordance with our response (i.e. removing Level 1 Sanctions), Section 8.1 can be removed. This encourages a fair appeals process for all other Sanctions.	See response to item 11, above.
General / Other comments			
91.	Approved Inspector	"The guidance appears to be very comprehensive/detailed and clearly lays out the expectations of CICAIR. It may be useful to provide examples of previous cases (without specifically referring to individuals or company's) to outline examples of differing levels of sanctions and the outcomes. I feel this would assist to allow us to review our procedures and in particular terminology and interpretation of specific requirements."	CICAIR will consider whether or not additional guidance should be provided on previous cases.
92.	Approved Inspector	General comments "I would say that not all of the actions will always be required. A Panel needs to carefully consider all factors when dealing with a party to whom the AI may not be contracted. It can look less than remorseful if it is apparent that information is being withheld from a complainant for an AI can comply with data protection laws or if the contract prevents the passage of certain information."	The draft Guidance sets out that all relevant factors should be considered. CICAIR encourages AI to proactively engage in the complaints and disciplinary processes.
93.	Independent adjudicator	General comments "This review is much-needed and it will be very helpful to panels to	It is CICAIR's view that this is a judgment call for the Panel to make having regard to the Guidance. By way of example only, it is

	Respondent type	Respondent comments	CICAIR response
		<p>have a wider range of sanctions available. Previously there was a big gap.</p> <p>Re Appendix 1 there could be more clarity on what happens if some of the relevant factors in a case fall within one column and some in another, as will usually be the case. Is it a matter of counting where the majority of factors falls? Or are some factors more important than others and carry more weight, eg dishonesty?"</p>	<p>CICAIR's view that where there are more boxes checked at the serious end than at the lower end, that is an indication of the conduct being more serious, therefore likely warranting a more serious outcome.</p>
94.	Approved Inspector	<p>Other Comments: Comment in relation to Appendix A – Sanction's guidance – Conviction – Column 1 & 2 contains the statement 'There has been a conviction of a civil, criminal or regulatory offence by an Approved Inspector, a director, a staff member or others working' – Should this provided specificity around the type of offence i.e. Should this clarify that this relates to an offence associated with an AI, running a business or other serious offence which would affect public safety as currently there is some ambiguity around the type of offence e.g., a speeding conviction may qualify under the current definition.</p> <p>Comment in relation to Appendix A –Sanction's guidance – Row 'Intention of the approved inspector' and 'Personal conduct matters' contain statements where the Approved Inspector 'may' have acted deliberately, how would 'may have acted' be demonstrated to a disciplinary panel.</p>	<p>It is CICAIR's view that such specificity is not required in relation to the type of offence capable of being considered by a Panel. CICAIR considers that the current notification requirements for conviction are appropriate and it uses its discretion to decide which convictions should be referred to a Disciplinary Panel for consideration and determination.</p> <p>It is important that AI proactively engage in the complaints and disciplinary processes to ensure the Panels have all relevant information before them.</p> <p>In relation to comments on Appendix A, this is a matter for the Panel to determine having regard to the evidence before them from CICAIR and the responding Approved Inspector.</p>
95.	Approved Inspector	<p>Other Comments: The complaint procedure is seen by some people</p>	<p>See response to item 19, above.</p>

	Respondent type	Respondent comments	CICAIR response
		<p>as a cost free way to make a claim against an approved inspector. The limitations of the role and sanctions, with regarding awarding money to complainants, needs to be front and centre of any information issued by the CICAIR to complainants. The guidance should clearly state that the complaints procedure will not address defective building works and that the complainant should see legal advice to understand their rights and any recourse they may be entitled to. I can't stress enough that the CICAIR complaints procedure should disentangle itself from the appearance of providing a financial remedy to people who have suffered poor quality or sub standard building work. At the moment the process gives false hope to individuals who conclude the process and are then disappointed that they don't get any money. The correct way to gain a financial remedy is through the courts or a notification to our insurers, and not through the CICAIR compliant procedure. The CICAIR has an aim to provide clarity about possible sanctions, this should include clear information about not being able to award money if a complaint is upheld.</p>	
96.	Approved Inspector	<p>Other Comments: As stated several times, the terminology 'Approved Inspector' used to include individually licenced professionals but now is more reflective of large companies with many employees having delegated duties. These employees with delegated duties are not Approved Inspectors but seem to be labelled as such but without any recourse on an individual level. It seems inappropriate that an AI operating within the code of conduct and all other requirements could have a sanction for the actions of a professionally qualified surveyor, who acted outside of the reasonably controllable barriers imposed by the company. Sanctions should be equally imposed at individual level where it can be proven that there was no fault of the company.</p>	See response to item 10, above.

	Respondent type	Respondent comments	CICAIR response
97.	Fire Rescue Service	<p>Other Comments: We would like to see sanctions against AIs more clearly visible on the main register for AIs on the CICAIR website. Also thank you for the opportunity to provide comments on this consultation. Although this consultation has been submitted by an individual, it was completed between 4 Inspecting Officers, giving a range of views and feedback that has been collated into one final submission from [REDACTED] Fire and Rescue Service. Please use the contact details of the individual provided as a single point of contact should you require anything further.</p>	CICAIR intends that the register will show sanctions going forward that are publishable.
98.	Industry Body	<p>Other Comments: The guidelines perpetuate an out-of-date assumption that Approved Inspectors continue to be individuals or very small companies where those holding the approval have personal insight in the assessment and certification of each and every project. The reality is that more than 50% Approved Inspector of projects are certified by a handful of larger corporate organisations who may have more than 100 members of staff dealing with upwards of 20,000 projects per annum and where the individual project involvement of the licence holder is inevitably very limited.</p> <p>The nature of the industry is that day to day service delivery is delegated to appropriately, professionally qualified and experienced building control surveyors who must deliver their services in accordance with industry codes of practise and related company policy and procedure.</p> <p>CIC sanction guidance quite logically reflects those operated by the RICS but differ in a very important ways, primarily that RICS guidance clearly recognises the importance of individual professional behaviour and the need for it to be directly sanctioned in instances where it falls short of appropriate standards.</p>	See response to item 10, above.

	Respondent type	Respondent comments	CICAIR response
		<p>Any approved inspector employing surveyors in the industry will recognise what a demanding and difficult role this is and understand that whilst the vast majority off practising professional surveyors are of an extremely high calibre, there are a small but significant number who are not yet up to the demands of the contemporary building control profession. That must also be set against a backdrop of a substantial shortfall in the overall number of surveyors operating in the field.</p> <p>Experience of the industry, not to mention simple common sense, tells us that the application of sanctions to a large Approved Inspector will not protect the public or the profession, if an individual acting unprofessionally is able to simply move on to their next project or employment situation without any censure, retraining or other corrective action. Neither will it meaningfully deter the individual from future indiscretion.</p> <p>The guidance as drafted extends the doctrine of vicarious liability too far. Whilst employers in these circumstances must take responsibility for the actions of their employees, we must recognise that they cannot entirely control and direct their actions and must be entitled to rely on a reasonable level of professional conduct from an appropriately qualified and experienced professional.</p> <p>The guidance must be redrafted to improve clarity regarding the action that should be taken in respect of independent actions by an individual versus those which are systemic to/condoned by the organisation.</p> <p>It is understood that individual registration of Building Control surveyors is intended in the near future. This guidance should be drafted in such a way as to accommodate these future proposals.</p>	

	Respondent type	Respondent comments	CICAIR response
99.	Chartered Building Engineer	<p>Other Comments: I think there needs to be a Glossary of terms and also there needs to be more linkages to auditing as a sanction- also why not impose fines?</p>	<p>CICAIR will prepare a glossary of terms to accompany the Sanctions Guidance.</p> <p>Audit is a sanction available at level 2 (and therefore at level 3).</p> <p>CICAIR does not have the statutory power to impose fines.</p>
100.	Approved Inspector	<p>Introduction</p> <p>To achieve their stated objectives of protecting the public interest and maintaining public confidence in the profession, maintaining standards and ensuring compliance, the realities of how the market/sector is structured and how the AI service is delivered must be fully recognised and addressed. The guidelines perpetuate an out-of-date assumption that Approved Inspectors continue to be individuals or very small companies where those holding the approval have personal day to day involvement and insight in the assessment and certification of each project. The reality is that more than 50% of Approved Inspector projects are certified by a handful of larger corporate organisations who may have more than 100 members of staff dealing with upwards of 20,000 projects per annum and where the involvement of the individual licence holders in every project is inevitably very limited.</p> <p>An Evolving Industry</p> <p>The nature of the industry today is that day to day service delivery is delegated to appropriately, professionally qualified and experienced building control surveyors who must deliver their services in accordance with industry codes of practise and related appropriate</p>	<p>See response to item 10, above.</p>

	Respondent type	Respondent comments	CICAIR response
		<p>approved (through the audit process) company policies, systems and procedures.</p> <p>RICS Guidance</p> <p>CIC sanction guidance quite logically reflects those operated by the RICS in many respects but differs in some very important ways, primarily that RICS guidance more clearly recognises the importance of individual professional behaviour and the need for it to be directly sanctioned in instances where it falls short of appropriate standards.</p> <p>Any approved inspector employing surveyors in the industry will recognise what a demanding and difficult role this is and understand that whilst the vast majority of practising professional surveyors are of an extremely high calibre, there are a small but significant number who are not yet up to the demands of the contemporary building control profession. That must also be set against a backdrop of a substantial shortfall in the overall number of surveyors operating in the field.</p>	
101.	Approved Inspector	<p>Individual Professional Registration</p> <p>With these objectives in mind consider CICAIR's approach to sanctions in respect of a professionally qualified individual acting outside industry and employer codes of conduct, policies and procedures. Experience of the industry, not to mention simple common sense, tells us that the application of sanctions to a large Approved Inspector will not protect the public or the profession, if an individual acting unprofessionally is able to simply move on to their next project or employment situation without any censure, retraining or other corrective action. Neither will it meaningfully deter the individual from future indiscretion.</p>	<p>See response to item 10, above.</p> <p>Please note that the draft Sanctions Guidance is designed for the current regulatory regime under CICAIR. It is anticipated that, given there will be a shift to introduce individual regulation, the Building Safety Regulator will introduce its own guidance to accommodate a change in regime.</p>

	Respondent type	Respondent comments	CICAIR response
		<p>The guidance as drafted extends the doctrine of vicarious liability too far. Whilst employers in these circumstances must take responsibility for the actions of their employees, we must recognise that they cannot entirely control and direct their actions and must be entitled to rely on a reasonable level of professional conduct from an appropriately qualified and experienced professional.</p> <p>The guidance must be redrafted to improve clarity regarding the steps that should be taken in respect of independent actions by an individual versus those which are systemic to/condoned by the organisation.</p> <p>It is clear that individual registration of Building Control surveyors is intended in the near future. This guidance should be drafted in such a way as to accommodate these future proposals.</p>	
Appendix 1 – Sanctions considerations			
102.	Fire Rescue Service	Departure From Professional Standards Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
103.	Approved Inspector	Likelihood Of Recurrence Level1: This section must be taken with due consideration to the size and longevity of the AI company.	CICAIR encourages proactive engagement from AIs in complaints and disciplinary processes to ensure all relevant factors are taken into account.
104.	Fire Rescue	Likelihood Of Recurrence Level1: Information in this cell within the	It is CICAIR's view that Level 1 Sanctions

	Respondent type	Respondent comments	CICAIR response
	Service	table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	are appropriate and necessary.
105.	Fire Rescue Service	Likelihood Of Recurrence Level2: Likelihood is irrelevant as it does not deter AIs from repeating breach where Sanctions are imposed based on this as a contributing factor. Severity (departure from professional standards) should be the greater consideration.	CICAIR considers that likelihood is a relevant factor.
106.	Approved Inspector	Disciplinary History Level1: This section must be taken with due consideration to the size and longevity of the AI company.	CICAIR encourages proactive engagement from AIs in complaints and disciplinary processes to ensure all relevant factors are taken into account.
107.	Approved Inspector	Disciplinary history level 3 & 4 "For how long? & what about companies that companies that are under new management?"	See response to item 53, above.
108.	Fire Rescue Service	Disciplinary History Level1 – 4: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
109.	Fire Rescue Service	Insight Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
110.	Approved Inspector	Insight Level1 - 4: How would this be established as it could be	It is the Panel's responsibility to determine insight having regard to the AI's

	Respondent type	Respondent comments	CICAIR response
		open to interpretation, would this be reliant on opinion or perception?	engagement in the disciplinary processes which may include submissions detailing insight into the relevant failing.
111.	Fire Rescue Service	Contrition Or Remorse Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
112.	Fire Rescue Service	Contrition Or Remorse Level2: Further clarity needed on what "limited contrition or remorse" is defined as.	This will be determined on a case by case basis by the Panel, supported by a legal assessor, having regard to all information before them.
113.	Approved Inspector	Contrition Or Remorse Level1 – 4: How would this be established as it could be open to interpretation, would this be reliant on opinion or perception?	It is the Panel's responsibility to determine contrition or remorse having regard to the AI's engagement in the disciplinary processes which may include submissions detailing contrition or remorse into the relevant failing.
114.	Fire Rescue Service	Remedial Action Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
115.	Approved Inspector	Financial Benefit Level1: Should there be a distinction between personally benefitted from a rogue surveyor and company benefitted at a corporate level.	This is a consideration for the Panel based on the information before them at the time.
116.	Fire Rescue	Financial Benefit Level1: Information in this cell within the table	It is CICAIR's view that Level 1 Sanctions

	Respondent type	Respondent comments	CICAIR response
	Service	should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	are appropriate and necessary.
117.	Approved Inspector	Financial Benefit Level2: I think this is too serious to be a moderate breach 'intentional' as it may be Fraud at law!	This will vary on a case by case basis and is ultimately a matter for the Panel to determine.
118.	Fire Rescue Service	Cooperation With Cicaire Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
119.	Fire Rescue Service	Cooperation With Cicaire Level 2 – 4: Cooperation with CICAIR as the designated AI register should carry considerable weight when considering sanctions and this should be emphasised within the guidance document.	CICAIR agrees, but notes that this is only one relevant factor and may be significantly outweighed by the severity of the conduct.
120.	Chartered Building Engineer	Cooperation With Cicaire Level3 and 4: include other enforcement bodies	Cooperation with other enforcement bodies is likely to be irrelevant where they have not cooperated with CICAIR. This however is a factor at paragraph 3.4.5.14 of the draft Guidance.
121.	Fire Rescue Service	Willingness To Change Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
122.	Fire Rescue	Conduct Capable Of Rectification Level1: Information in this cell	It is CICAIR's view that Level 1 Sanctions

	Respondent type	Respondent comments	CICAIR response
	Service	within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	are appropriate and necessary.
123.	Fire Rescue Service	Conduct Capable Of Rectification Level2 – 4: Providing Sanctions are imposed proportionately and appropriately, there should not be a need to consider any recurrence of breaches, deeming this an unnecessary field.	This is an important consideration and relevant depending on the conduct being considered by the Panel.
124.	Fire Rescue Service	Relationship To Competence Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
125.	Fire Rescue Service	Relationship To Competence Level2 – 4: Internal to AI - not required by CICAIR.	See response to item 58, above.
126.	Approved Inspector	Safety Of Building Users Level1: At project level, there again should be distinction between what would be within the AI's reasonable control and that which is ultra vires.	CICAIR's Panels include AI members to assist with such determinations.
127.	Fire Rescue Service	Safety Of Building Users Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.

	Respondent type	Respondent comments	CICAIR response
128.	Chartered Building Engineer	Safety Of Building Users Level4: define harm - mental as well as physical?	It is CICAIR's view that such a definition is not necessary and runs the risk of narrowing the definition unnecessarily.
129.	Approved Inspector	Safety of Building Users levels 1, 2, 3 and 4 If relevant to the complaint, and the issue was caused by the AI working outside the scope of its function, then no.	It is CICAIR's view that this is an appropriate and important public interest consideration.
130.	Fire Rescue Service	On Going Risk Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
131.	Approved Inspector	Conviction Level1: Again, a staff member being conviction of a serious offence that could jeopardise a company employing hundreds of people seems disproportionate.	CICAIR encourages proactive engagement from AIs in complaints and disciplinary processes to ensure all relevant factors are considered. Further, it is CICAIR's view that not all convictions will be relevant to the AI licence, particularly where they do not relate to an AI's functions, however, they remain reportable to ensure that all matters of potential relevance are brought to the attention of CICAIR.
132.	Fire Rescue Service	Conviction Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.

	Respondent type	Respondent comments	CICAIR response
133.	Approved Inspector	<p><u>Conviction</u></p> <p>Level 4 (Unacceptable Breach)</p> <p><i>The Approved Inspector has received a conviction under section 57 of the Building Act 1984 and there is evidence to demonstrate the conduct is systemic and/or there has been a conviction of any other serious civil, criminal or regulatory offence committed by an Approved Inspector, a director, a staff member or others working on their behalf.</i></p> <p>Where the “other serious civil, criminal or regulatory offence” is committed by “a director, a staff member or others working on their behalf.” The breach should be unacceptable only where there is evidence to suggest that the conduct is systemic or that the approved inspector colluded with such behaviour.</p>	See response to item 131, above.
134.	Fire Rescue Service	<p>Compatibility Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.</p>	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
135.	Approved Inspector	<p>Dishonesty Level1: As above, personal actions to be separated from corporate actions. A bank fraud conducted by an employee shouldn't see Nat West's banking licence withdrawn? A surgeon acting dishonestly shouldn't mean the hospital closes.</p>	<p>CICAIR encourages proactive engagement from AIs in complaints and disciplinary processes to ensure all relevant factors are considered.</p> <p>The facts of the particular case will be considered by the Panel to determine the severity of the conduct and the implications for the AI.</p>
136.	Fire Rescue Service	<p>Dishonesty Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous</p>	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.

	Respondent type	Respondent comments	CICAIR response
		questions, therefore removing Level 1 Sanctions.	
137.	Fire Rescue Service	Intention Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
138.	Fire Rescue Service	Intention Level2 – 4: Difficult to determine intention - this would need to be dealt with during the investigative process.	CICAIR encourages proactive engagement from AIs in complaints and disciplinary processes to ensure all relevant factors are considered.
139.	Approved Inspector	<p>In the review of construction industry council approved inspectors register in 2013, Michael Ankers OBE made the following recommendation which was accepted by CICAIR. The recommendation was as follows:</p> <p><u>Recommendation 8</u></p> <p>The revisions to the Code of Conduct and Procedural Notes for Disciplinary Hearings should provide guidance to the Disciplinary Panel on the circumstances that will give rise to the different sanctions being imposed on an AI</p> <p><i>3.36 In my view removal from the Register for disciplinary reasons should be the last resort and only applied when an AI is unwilling or unable to comply with the requirements of the Disciplinary Panel and abide by the provisions of the Code or the Building Control Performance Standards.</i></p> <p>In its present form the guidance does not follow this recommendation.</p>	There has been a significant passage of time since the Ankers Review and it is CICAIR's view that the draft Guidance appropriately indicates when a Level 4 sanction should be applied.

	Respondent type	Respondent comments	CICAIR response
		<p>The following sections of the guidance are at variance with Ankers' recommendations:</p> <p><u>Intention of the Approved Inspector</u></p> <p>Level 4 (Unacceptable Breach)</p> <p><i>The Approved Inspector has acted deliberately, recklessly, negligently or through incompetence, particularly where there is a continuing risk to building users.</i></p> <p>There is a major difference between acting deliberately or through incompetence. A level 4 should be considered only for the former circumstance.</p> <p>In the instance where a member of staff of an approved inspector acts in this way, this should be considered an unacceptable breach only where this has been clearly evidenced as a systemic fault failure or where the issue has been deliberately ignored by the corporate Approved inspector or they are not cooperating to carry out improvements.</p>	
140.	Approved Inspector	<p>Personal Conduct Level1: These all appear to be personal actions unless the company policy is to be racist or sexist?</p>	<p>Not all personal conduct will be relevant to the continuation of an Approved Inspectors licence.</p> <p>In this respect, CICAIR encourages proactive engagement from Approved Inspectors in complaints and disciplinary processes to ensure all relevant factors are considered.</p> <p>CICAIR has identified a typographical error</p>

	Respondent type	Respondent comments	CICAIR response
			in Personal Conduct Level 1 and will amend this to remove "no".
141.	Fire Rescue Service	Personal Conduct Level1: Information in this cell within the table should be included under Level 2 breaches as per our response to previous questions, therefore removing Level 1 Sanctions.	It is CICAIR's view that Level 1 Sanctions are appropriate and necessary.
142.	Approved Inspector	<p><u>Personal conduct matters</u></p> <p>Level 4 (Unacceptable Breach) <i>There was inappropriate personal conduct (racism, sexism, harassment, violence etc) by a representative of the Approved Inspector towards members of the public or others, and where the conduct is such that the public interest can only be reasonably satisfied by the withdrawal of approval. The Panel should consider the seriousness of the conduct in coming to its decision and the actions, if any, taken by the Approved Inspector in responding to the conduct should be considered.</i></p> <p>Where there has been inappropriate personal conduct by the representative of the Approved Inspector, the breach should only be considered as level 4 if the behavior is systemic or is condoned.</p>	See response at item 140, above.
143.	Fire Rescue Service	Personal Conduct Level2 – 4: Summarised in all above - this section is not required.	CICAIR considers it is helpful to set this out separately.
Appendix 2			
144.	Approved Inspector	<p>Appendix 2, Level 1</p> <p>The question of whether or not an apology should be issued should</p>	It is CICAIR's view that this is best determined by the Panel considering the conduct.

	Respondent type	Respondent comments	CICAIR response
		be carefully considered.	
145.	Fire Rescue Service	App 2 Lv1: Apology not accepted as a Sanction by CICAIR. This should be done as part of the AIs internal complaints procedure.	It is CICAIR's view that apologies in certain circumstances are appropriate and best determined by the Panel considering the conduct. See also response to item 58, above.
146.	Fire Rescue Service	App 2 Lv2: Training needs should not be a Sanction imposed or optional to CICAIR. Audit & investigative procedure should be the initial trigger upon identification of AI failings.	See response to item 58, above.
147.	Fire Rescue Service	App 3 Lv3: Would prefer for the document to bullet point the different types of restrictions that may be imposed on AIs for clarification purposes.	These are bullet pointed in the substantive draft Guidance and at Appendix 2.
148.	Chartered Building Engineer	App 2 Lv1 – Lv3: Intensive audit in to certain areas	Audit is an option available under Level 2 or Level 3.