TAXATION DISCIPLINARY BOARD

# DISCIPLINARY TRIBUNAL GUIDANCE NOTES

## INTRODUCTION

1. You are receiving this guidance because allegations against you have been referred by the Investigation Committee ("IC") to the Disciplinary Tribunal ("DT"). A Response Form, a list of the present members of the Disciplinary Panel and a copy of the Taxation Disciplinary Scheme and the Regulations made under it, accompany this guidance note.

2. The DT is entirely independent of the Chartered Institute of Taxation ("CIOT") and the Association of Tax Technicians ("ATT"). It is also entirely independent of the IC, and will not know the reasons why the IC has referred the case for a hearing.

3. No finding has been made against you in respect of any of the allegations now to be considered by the DT. The reference of those allegations to the DT implies no criticism of you, and you remain in the same good standing with CIOT and/or ATT as applied before the reference was made.

4. You receive, with this guidance, copies of the Taxation Disciplinary Scheme which governs the work of the DT and copies of the relevant Regulations made under it. That Scheme and those Regulations are the definitive documents and they prevail over anything contained in this guidance. This guidance is provided to help you to respond to the allegations and to explain how the DT carries out its work.

## STRUCTURE AND WORK OF THE DISCIPLINARY TRIBUNAL

5. Of the members of the DT, some are lawyers; some are nominated by CIOT or ATT and some are lay people who have no professional involvement with tax. The Clerk to the DT will be your normal point of contact. S/he has had no involvement with any earlier consideration of your case.

6. The DT is usually composed of three members selected from the Disciplinary Panel. The Chair is a qualified lawyer; one person is a member of CIOT or ATT; and the third is a lay person who is not a member of either body. All final decisions on your case will be taken by such a Tribunal.

7. The case against you will be presented by a person nominated by the TDB (usually a barrister), and that person (or some other person similarly so nominated) will be responsible for the preparation as well as the presentation of that case. That person, described in later paragraphs as "the Presenter", has no role in deciding whether allegations against you have been substantiated or, if they are substantiated or admitted by you, what sanction should be imposed.

## THE POLICY OF THE DISCIPLINARY TRIBUNAL

8. The policy of the DT is to be fair. That means being fair to you and also to the public interest, which requires the maintenance of high standards by those professionally involved in taxation.

9. This means that you are entitled to expect from us:

- Impartiality and independence.
- Courtesy and consideration.
- The final determination of your case as quickly as circumstances and resources allow.
- Recognition (so far as our impartiality allows) of the stress to which you will inevitably be subject.
- Proportionality in the event that any sanction has to be imposed upon you.

10. We in turn are entitled to expect from you:

- Co-operation with us and (so far as necessary) with the presenter in ensuring the proper preparation and presentation of the case by both sides.
- Prompt compliance with any time limits and any interim directions we may make.
- Courtesy and consideration in dealings with us and the presenter.
- Proper preparation and presentation of your case so that the important issues can be readily identified and time is not wasted.

11. We regard time limits as important, and usually indicate the consequences of failure to comply with them. If you consider that any time limit is likely to be too short, you should notify us (through the Clerk) at an early stage and not wait until the limit is about to expire, or has already done so. We will then consider whether an extension can be granted and may invite you (and the presenter) to attend a preliminary hearing for that purpose.

## WHAT YOU SHOULD DO NEXT

12. The first thing is to notify the Clerk (by post or email) that you have received the allegations against you (which are set out in the Response Form) and the papers (including this guidance note) which accompanied them. Do this straight away as otherwise unnecessary telephone or other enquiries may have to be made. Please also confirm your contact address, telephone number and email address.

13. If there are any matters outside the specific allegations against you which you feel are important to your response – for example if you suffer from any medical condition which you believe may have affected your conduct and contributed to the allegations made against you or which may affect your attendance at the Tribunal - you must inform the Clerk at the earliest opportunity. Any claim to be suffering from a medical condition, whether physical or mental, should be supported by medical certificates which spell out clearly the diagnosis at all the relevant times. Claims relating to any other matters which you would like taken into account, should be supported by third party evidence wherever possible. You should in all cases, explain the way in which you believe the relevant matter affected your conduct *(Question 9).* If you do not do this at the outset of the

Disciplinary Tribunal process, it may be too late to do so at a later stage of the proceedings.

14. With the papers which accompany the notice of the allegations, you will find a list of the present members of the Disciplinary Panel, from whom the members of your Tribunal will be selected. If there is any person on that list whom you consider should be disqualified from taking any part in the consideration of your case, you should state his or her name on the Response Form *(Question 1).* If there is more than one such person, you will have to provide reasons for your objection to each person (including the first) in a separate note to accompany the Response Form. The sort of reasons which might apply are that the member concerned is personally known to you or, you believe, to somebody else associated with the allegations or has had some prior involvement in matters with which the allegations are concerned. Remember that you do not have to give reasons if you object to only one member of the Disciplinary Panel.

15. You should consider carefully the allegations made against you. If you think that they are too vague for a proper response, you should write at once (by email or post) to the Clerk setting out the points on which you feel that you need further information. If you obtain legal advice, your adviser will be able to help you with this.

16. You should, in any case, consider whether you need legal advice in providing your response to the allegations and in preparing and/or presenting your case. If you cannot afford to pay privately for the services of a professional adviser, a Citizens' Advice Bureau may be able to help you, or put you in touch with someone who can. The reason why you have been sent two copies of the papers is so that you can give one of them to your adviser, if you decide to engage one. It is always best to seek professional help early rather than leaving it until later. If you do engage a legal or other adviser, then (unless you ask for no oral hearing) make sure that his/her name and contact details are given on the Response Form and indicate whether you wish further communications from the DT or the presenter to be sent to that adviser rather than you *(Question 7).* Bear in mind that you will be regarded as responsible for any failure by your adviser to notify you of any matter communicated to him or her and such failure will not normally be regarded by the DT as an excuse for any consequence of such a failure. If you engage a professional adviser after you have returned the Response Form, you should immediately so inform the Clerk and indicate whether you wish further communications to be sent to him or her.

17. You have 28 days from the date of the covering letter to complete the Response Form and to return it to the Clerk. This is adequate time and is provided so that your response can be considered and not rushed. This means that you should start thinking about your response as soon as you receive the papers and not wait until the 28 days is nearly up. Always refer to these guidance notes when completing the Response Form. Some of the questions refer to a number and that number is that of the paragraph of these guidance notes which is particularly relevant to the question. If you fail to return the Response Form within the specified time (or any extended time you may apply for and be granted) then the DT will proceed on the basis that you contest all the allegations, have no objection to any member of the DC, make no application for the hearing to be in private and are available on the hearing date (see paragraph 20 below).

18. The Response Form sets out the allegations and, if there is more than one, you should consider each one separately. If you decide to contest any allegation, you will have to say whether that is simply because you claim it is untrue, or whether you consider that it is

literally true, but that there are circumstances which prevent it from being a disciplinary offence. In the former case, it will be enough to say that it is literally untrue when giving the reason for your denial. In the latter case, you should set out the relevant circumstances briefly, but with sufficient detail to enable the DT and the presenter to understand them *(Question 2).*

19. If you decide to admit any allegation, bear in mind that a sanction is likely to be imposed on you in respect of it, although you will have the opportunity to make representations to the effect that there should be no sanction or as to its severity. If you admit some, but not all, of the allegations, then the DT will normally wait until the contested allegations have been disposed of before determining any sanction in respect of those admitted. If exceptionally the DT considers that it should deal with the matter differently, you will be given an opportunity to make representations on the question and also on the severity of any sanction.

20. You will have to say in the Response Form whether or not you require an oral hearing. You are entitled to that in every case but, bear in mind that, if an allegation is admitted or substantiated, the sanction may comprise or include a costs order against you and the costs are likely to be much higher if there is an oral hearing. If there are disputed issues of fact, an oral hearing is likely to be essential so that witnesses can be questioned. If you admit all the allegations, or if the ones you contest can, in your opinion, be adequately answered in writing, then you may elect to have no oral hearing. In that case, you should send in your written representations with the Response Form or at the latest within 42 days from the date of the letter with which you received these guidance notes. Read paragraph 20 carefully if you contest any allegation but still elect to have no oral hearing. The presenter will have an opportunity to respond (in writing) to your representations and you will, of course, receive a copy of any response and you will be entitled (if there is a response) to make further written comments, so long as they do not introduce new issues. The presenter may request an oral hearing even if you elect not to have one, or the DT may decide of its own motion that an oral hearing is necessary, but you may be invited to a preliminary hearing in either event and you will be free to request one, provided you have good reasons for such a request. If you request that there should be no oral hearing, but fail to send in your written representations within the specified period or any extended period you apply for and are granted, the consequences will be the same as if you had not sent in the Response Form at all – see paragraph 17 above.

21. If you elect for an oral hearing, you can normally expect that it will take place during a month which commences two or more months after the end of the month during which these notes were sent to you. If there are any dates when you will not be available, you should state those dates on the Response Form. If you consider that there are good reasons for accelerating the hearing date, you should notify the Clerk to that effect and state your reasons.

22. If you elect for an oral hearing, or such a hearing is ordered in spite of your request not to have one, it will normally be in public, but you can request a private one by ticking the appropriate box in the Response Form and giving a note of your reasons. The DT may decide to have a preliminary hearing on the point, but bear in mind that it will be too late to apply for a private hearing if you wait until the date fixed for the oral hearing, or a slightly earlier date.

## LEGAL POINTS AND TECHNICAL DEFENCES

23. Apart from straightforward defences such as denying allegations of fact against you or explaining circumstances which you say are material in negating such allegations, you may wish to put forward a defence based on the Human Rights Act 1998 or some perceived inadequacy in the constitution of the DT or the framework within which it works. Or you may wish to raise some point of law, which you claim has an important effect on the case against you. Such defences and points are referred to as "Technical Defences", although that does not mean that they are unimportant or that they may not deal with substantial relevant issues. Paragraph 10 of the Response Form asks whether you wish to raise such a point. If you do, you should answer "yes" and give brief details of it. There may be a direction for it to be taken as a preliminary point, possibly to be determined on paper without an oral hearing. The overriding principle is that you should be allowed (and encouraged) to take every point and offer every defence properly open to you, but the main substantive hearing, possibly requiring the attendance of witnesses, should not be distracted by long discursive arguments about matters on which the members of the DT may be unprepared. If you succeed on the point a substantive hearing may not be necessary at all. If you answer "no" and do not change that answer at least two weeks prior to the Hearing, you will not (unless the DT otherwise directs) be permitted to raise a Technical Defence at the Hearing, although you may be permitted to make written representations about it afterwards.

## WITNESS STATEMENTS AND WITNESSES

24. The Statements are very important. Their purpose is to set out the evidence which you intend to give, or which a Witness you wish to call intends to give. They should always start with "I (full name) of (address) state as follows". They should then continue with numbered paragraphs and should be dated and signed at the end. In preparing your own Witness Statement or in encouraging any Witness you wish to call to prepare his or hers, you should bear in mind the following:

- They should be in the first person, eg "I did ..", "I said .." and should deal with facts and not arguments.

- They should be as specific as possible. Thus "I advised XYZ etc" is less valuable than "On 2 July 2012 at a meeting with XYZ at my office I advised XYZ etc".

- If there is a contemporaneous note of a conversation, it should be referred to and indexed to a copy of the note to be included in the Bundle (paragraph 29). For example, after the statement in the previous paragraph it might be stated "On the day following the meeting, I made a note of it, a copy of which accompanies this Statement". Similarly, copies of all written communications, in or out, to which you refer must accompany the Statement.

- Make sure that your Witness Statement covers all the relevant factual ground. It will help you to sketch out in advance the matters you need to cover – or in the case of another Witness you wish to call, the matters you wish him or her to cover. But in the case of another Witness, the Statement should be in her or his words and not yours.

25. You are required to notify the Clerk of any Witnesses you intend to call at the hearing. You must do so at least 28 days before the hearing. It will not normally be appropriate to call Expert Witnesses. For example, it is unlikely to be helpful to ask another Tax Practitioner to say whether the manner in which you helped Clients with their Tax Returns was in accordance with his or her normal practice. If relevant, it will be for the DT to decide whether what you did was adequate and you should bear in mind that the DT will include at least one other Tax Professional. However, occasionally, an Expert Witness may be appropriate; for example, if the case against you concerns a technical tax avoidance scheme, it could be useful to have a Statement from a Specialist (possibly Tax Counsel) that the scheme was technically sound; and, if you claim that you suffer (or suffered) from a medical condition, a Statement from your Doctor would obviously be useful.

26. You will see from the Regulations the date by which you must exchange Witness Statements with the Presenter. That is the last date and the exchange may take place earlier. You need not send copies of the Witness Statements to the Presenter until s/he has sent to you his/hers. You should also send copies of any correspondence or other documents to which the Witness Statement refers, unless you know that the Presenter has a copy already and it is obvious what the document is. Each copy document should be headed with the name of the Witness and the number of the paragraph of the Statement which refers to it. Unless the DT otherwise orders, neither you nor any other Witness you call will be permitted to refer to matters not mentioned in the Witness Statements. The same will apply, of course, to the Presenter. Until you receive the Presenter's Witness Statements you will not know precisely the nature of the evidence against you. If you feel that one of her/his Witness Statements deals with a matter not referred to at all in the Witness Statements on your side, you may prepare a supplemental Statement to deal with it. Do not do this merely because the Presenter's Witness Statements contradict matters in yours or put a different interpretation on them. You can deal with points like that in your Skeleton Argument and/or in your cross-examination of the Presenter's Witnesses. It is only matters not dealt with at all in your Witness Statement (or perhaps in cases where a challenge has been made as referred to in paragraph 29) which may call for a supplementary Statement – and not even then if you consider that the point is unimportant or uncontroversial, ie you agree in substance with what it says.

27. You may consider that one or more of the Presenter's Witnesses is telling the truth and that you really do not disagree with whatever that Witness has stated. In that case, it may be unnecessary for that Witness to attend the hearing. You should consider this carefully and tell the Presenter as early as possible if you do not want to cross-examine any one or more of her/his Witnesses. It is both time-consuming and costly for Witnesses to attend hearings and so desirable to excuse them if possible. If you indicate that you do not want to cross-examine a particular Witness, then her/his Statement will stand as unchallenged evidence of what s/he has said in it. The Presenter may, of course, notify you that s/he does not intend to cross-examine one or more of your Witnesses, in which case the same consequences will follow and the Witness(es) concerned will not have to attend the hearing.

28. Subject to what is said in the previous paragraph, you and all the Witnesses you want to call **must attend the hearing** and it is **your responsibility** to ensure that they do. The DT will not normally read, or allow references to be made to, a Statement of a Witness who has not appeared at the Hearing except where Question 2 applies. You must agree with your own Witnesses what expenses you will meet and they will come from your own

pocket unless the DT makes some other order. **The DT has no funds of its own.** In the rare case where you call an Expert Witness, her/his fee must be negotiated and paid by you in the same way as expenses. It would, of course, be improper for any payment, other than expenses, to be made to any Witness other than an Expert Witness but the payment of reasonable compensation for loss of earnings may be treated as expenses.

## GENUINENESS OF COPY DOCUMENTS

29. If you consider that any copy of a document on which the Presenter intends to rely or which is referred to in any of his Witness statements is not a true copy of a genuine document, then you must tell the Presenter in writing as early as possible. The Presenter must similarly tell you if s/he challenges the authenticity of any document on which you rely or which you or one of your Witnesses refers in a Witness Statement. The point is not whether you agree with what the document says, it is that the copy or the original is not genuine. Examples might be because the document or the copy:

- Is a forgery;
- Pretends to be something which it is not, eg a contemporaneous note although in fact made long after the event;
- If a copy, not a true or complete copy.

If the Presenter makes such a challenge, then the consequence will be that you will have to prove the authenticity of the document or the copy at the hearing. You may need a Witness to state how and when the copy was made and, if the Witness made the copy, to confirm its authenticity. Or you may have to provide the original, if you can. The same will apply in reverse if you challenge a document on which the Presenter relies. You should not do this without a reasonable suspicion, since a challenge inevitably increases the cost of the case but, if you have a reasonable suspicion, you must tell the Presenter. If you fail to do so, you will not (unless the DT otherwise orders) be allowed to challenge the authenticity of the document or copy at the hearing. Without a challenge, the DT will assume the authenticity of any document or copy document relied upon by either party.

## BUNDLES

30. In preparation for the hearing, each party prepares a Bundle. The purpose is to ensure that each of the parties and each member of the DT can readily identify each document to which reference is being made at every point in the Hearing. Without it, much time would be wasted shuffling papers looking for the right one. In very complex cases with many documents, more than one may be needed. Sometimes it may be possible for the parties to agree to the production of a single Bundle and the DT strongly encourages that practice. In the ordinary case, your Bundle should contain:

- An index at the beginning;
- Copies of your Witness Statement and of Statements of all other Witnesses you are calling;
- Copies of all documents referred to in each of the Statements;

- Copies of any other documents on which you rely.

31. Each Bundle must be securely bound in a robust ring-binder marked with your name. Each page must be numbered consecutively and Witness Statements should show in the margin the page number of each document referred to in it. The index should show the page number on which each copy Witness Statement begins and the page numbers of the documents referred to in each.

32. It is your responsibility to prepare sufficient Bundles to ensure that the DT has three and the Presenter has one and to deliver them, in time, to the Clerk to the DT. You will need to bring at least two further Bundles to the Hearing; one for yourself and the other for Witnesses to refer to. The Presenter has a similar responsibility to prepare and deliver her/his own. In addition to her/his Witness Statements and copy documents, the Bundle for which s/he is responsible will contain copies of the allegations made against you and of your Responses and of any Orders made by the DT, so you do not need to include them in yours. The Guidelines tell you the date by which the Bundles must be delivered to the Clerk.

## SKELETON ARGUMENTS

33. The purpose of skeleton arguments is to summarise the case as seen by each party and the points of evidence and of law seen as significant. A skeleton argument can usually be quite brief. It should start with the issues which are raised by the case, eg "The main issue is whether I provided an adequate service to my clients A, B and C between the dates of ….. and …. A secondary issue is whether I unfairly and unreasonably delayed to hand over papers when a new Tax Adviser was appointed for A on …. (date). On the main issue, I say:

    - Between the dates of …. and …., there is no criticism of my service and it is clear from my Witness Statement (Bundle page 12) and from the correspondence and attendance notes at the time (bundle pages 24 to 30) that I dealt expeditiously with all matters entrusted to me.

    - Between the dates of …. and …. there was a delay, but this was due to my sickness (my Witness Statement para. 7 – Bundle page 14 – and the Statement of Dr Snodgrass – Bundle page 18). In the circumstances, my failure to have the matter dealt with by a colleague (my Witness statement para 16 – Bundle page 16) was understandable and excusable and does not merit criticism.

    - Between the dates of …. and …. the delay was due to the failure of the clients concerned to give adequate answers to the questions I had asked them (Bundle page 20).

    On the secondary issue, I say that I was entitled to retain the papers until my fees had been paid (my Witness Statement para 19 – bundle page 15) and this did not happen until ….".

    *[Note: This imaginary material is given to show how points may be made in a Skeleton Argument – not that the explanations offered would necessarily be sufficient in an actual case with similar allegations.]*

34. Skeleton Arguments should be in numbered paragraphs and documents referred to clearly identified by reference to your Bundle. They may indicate which of the Presenter's Witnesses you say are unreliable and, where your evidence conflicts with theirs, why your account is preferable. If you wish to raise legal points (not being Technical Defences as referred to in paragraph 23) you should summarise them and refer to the statute or text-book or case which supports your points. Photocopies of the relevant statute or case report or text-book page should be brought by you to the hearing for each DT member (three) and for the Presenter.

**THE HEARING**

35. You and your Witnesses (and your representative if you have appointed one) should arrive in good time.

36. The procedure will be reasonably informal, with everyone seated at a table. The Chair of the DT will introduce her/himself and the two other members of the DT and will then invite everyone present to identify her/himself. The Chair may well indicate whether some Witnesses can leave (on the basis that they will not be required until later) and will say whether they can remain present once the first Witness is called to give evidence. If the others are asked to leave, they should not return until called to give evidence but may remain after they have done so if they wish.

37. The Chair will then usually call upon the Presenter to open the case. S/he may make a short opening statement and possibly invite the Panel to read any Statements from Witnesses who are not present because you had indicated that you did not wish to cross-examine them (see para 6). Then the Presenter will call his/her Witnesses who are present. Each Witness will be reminded by the Chair of the need to be truthful. Witnesses will not be required to read out their Statements but should be asked to confirm the truth of them. The Presenter may ask the Witness to enlarge on some point in the Statement. When s/he has finished it will be your turn to cross-examine the Witness, unless you have indicated that you do not wish to do so. In preparing your cross-examination (which should be done well before the hearing date), remember:

- You should not seek to intimidate the Witness or argue with her/him.
- You should direct the Witness carefully to the paragraph or document you wish to ask her/him about and then, possibly, draw her/his attention to any inconsistency between that paragraph or document and some other.
- You should courteously put your version of events to the Witness, eg "You say that Dr Jones was at the meeting on Saturday but, if you look at his Statement (page 103 para 24) you will see that he says that he did not attend any meeting before the following Wednesday. So you must be mistaken, mustn't you?"
- You should keep an eye on the Chair so you do not lose the DT by going too fast.
- You should listen carefully to anything the Chair may say to you while you are cross-examining and follow her/his instructions.

- The Chair or some other member of the DT may wish to ask the Witness some other question and you must allow that to be done and listen carefully to the answer.

- When you have finished, you should say something like "I have no further questions, thank you."

38. The Presenter may ask a few supplementary questions when you have finished your cross-examination. Then s/he will call all his/her other Witnesses and the process (including cross-examination) will be repeated. At the end, s/he will probably say something like "That concludes the case for the Presenter."

39. At that point, the Chair will probably invite you to introduce your case and you may take the DT briefly through your skeleton argument. Then you will probably wish to give evidence yourself. You should say something like, "Now I should like to give my own evidence." Again you will not be required to read your Witness Statement out loud but you should confirm its truth and, if you want briefly to supplement any point, you may do so.

40. The Presenter will then have the opportunity of cross-examining you. Remember that you are not being an advocate presenting your case at this point. You are being asked questions about your evidence, ie about questions of fact. Your task is simply to listen carefully to the questions and to answer them truthfully. Your answers should generally be brief and always to the point of the question. It is not a time for speeches but you can, of course, explain any apparent inconsistencies between your version of events and those of others, or those you have given at some other time. The Chair may also ask questions of you at this time. When the cross-examination is finished you may (if you wish) deal with any factual points covered in your evidence where you think that further explanation is needed. But do not introduce new points. When you have done that, your time as a Witness is over and you resume your role as advocate (unless you have another advocate appearing for you).

41. If you are calling other Witnesses you now proceed with them in the order you choose. You should ask each to confirm the thrust of her/his Statement and you may ask for further elucidation of any point in that Statement if you so wish (although often that may not be necessary). The Presenter will then have the opportunity to cross-examine the Witness and, when s/he has finished, you can ask the Witness for further explanation of any point if you think that necessary. This is called "Re-examination" and will often be unnecessary.

42. When all your Witnesses have given their evidence, you should say so. The Presenter will then be asked to make her/his closing submissions and you should note carefully each point s/he makes. Then you will be asked to do the same. This is the time for your speech. You should summarise the evidence which has been given, so far as necessary to show the strength of your case and/or the weakness of the Presenter's. You should refer to any point of law you may wish to make (although you may not be permitted to raise any human rights or highly technical point unless you have given notice of your wish to do so – see para 23 above).

43. When you have completed your closing submissions the Chair may say that the DT wish to retire to consider the matter, or s/he may say that the hearing will be adjourned and the decision will be communicated later. If (whether or not retiring first) the Chair says that the DT have reached a decision, s/he will say that each of the allegations has, or has not, been substantiated and may give reasons then and there or may say that reasons will be given in writing at a later date. If none of the allegations has been substantiated, ie the DT has decided the whole case in your favour, nothing else will remain to be done, unless you wish to apply for costs, which you may do at that stage. There is no power for the DT to award costs against another party to the proceedings unless it considers that the conduct of that party has resulted in wasted costs. Costs may be awarded against the TDB only if the DT considers that the charge against you was brought maliciously or without justification.

44. If the Chair says that the DT has found one or more of the allegations to be substantiated, then the question of sanction (or penalty) will be considered. At that time, the Presenter will be asked for any information about any past disciplinary or criminal matters which affected you. This information will include any previous cases where a Prima Facie case was found against you, even if these did not lead to further disciplinary action. After that, you will be invited to make submissions about the appropriate sanction, giving reasons why a less serious view should be taken than might otherwise be the case. In other words, the purpose is not to argue with the decision but, on the basis that the decision is right, to state any mitigating circumstances. When you have finished, the Chair will say what sanction is to be imposed in your case. In doing so, the DT is required to take into account the Indicative Sanctions Guidance published by the TDB: this is available on the TDB's website. When the Chair has announced the sanction, the case is over except for any appeal you may wish to make. The rules about appeals are not a matter for the DT.

## THE NEXT STAGE

45. If it is decided, in response to your application, not to have an oral hearing, then the papers will be referred to a DT as soon as possible after receipt of your Response Form, your written representations, any response to them by the Presenter and any comments you may make on that response. If you admit all the allegations, your written representations should concentrate on any mitigating circumstances and on the sanction the DT should impose. It should refer to any previous record you may have of adverse disciplinary findings which have been made against you by any professional body to which you belong (including CIOT or ATT). The DT would expect, in that kind of case, to issue its decision on the sanction to be imposed within 90 days of having all the relevant papers. If you contest any allegation, the DT will not take into account (or be aware of) any previous disciplinary record when making its decision. In such a case, you should not, in your written representation to accompany or follow the Response Form, include any question about the nature or severity of any sanction. The DT's first decision, in that sort of case, will be limited to the question of whether it finds the allegation you contested to be substantiated or not substantiated. If the DT decides that the allegation has been substantiated, the Clerk will notify you of that decision and of any previous disciplinary record that was taken into account when deciding on the appropriate sanction. The date on which you receive notification of the sanction will be regarded as the date of the DT's decision for the purpose of the time limit for any appeal.

## COSTS

46. If the DT finds that one or more of the charges has been proved, it is likely to award costs against you. The DT will normally ask the Clerk for an assessment of all the costs that the TDB has incurred in bringing the case. These will include the costs of the initial investigation, the meeting of the Investigation Committee and the fees of the presenter and the Clerk, as well as the costs of the DT hearing. The Clerk will give you and the DT a breakdown of the costs. Every case is treated individually, so it is difficult to generalise about the level of cost that may be incurred. In a case where there is a full day's oral hearing, these could amount to around £5,000 (rather less, if two or more cases can be heard on a single day). If only some of the allegations are found to be proved, the DT may make a proportionate reduction in the level of costs which you are ordered to pay. You are free to inform the DT, as part of your mitigation, that you do not have the means to pay the costs of the case, but if you do so you must provide documentary evidence of your financial circumstances, to include income, capital, assets and expenditure in sufficient detail to enable the matter to be properly considered. It may be possible to make payments by instalments: the TDB will explain the process for doing so once the DT's order comes into effect. The TDB has produced separate guidance on costs, which is published on its website at www.tax-board.org.uk. You can also see on the website previous awards of costs which have been included in Tribunal findings and orders.

## PUBLICITY

47. Unless there are exceptional circumstances, the DT will normally order the TDB to publish its findings in those cases where it has found one or more charges proved. It is the practice of the TDB to publish the findings in the journal Tax Adviser and on the TDB website. The published findings will remain on the website for three years, but in cases where the DT has ordered that the member should be expelled or suspended the findings will remain on the website indefinitely.

14 March 2017