

TAXATION DISCIPLINARY BOARD

PUBLICATION OF DISCIPLINARY AND APPEAL FINDINGS

Guidance for Disciplinary Panel Members

1. This guidance advises members of the Disciplinary Panel on the TDB policy that should apply to the publication of the decisions of Tribunals on individual cases and the form that any publicity should take.
2. General principles
 - 2.1 The general principle is that any disciplinary finding made against a member will be published and the member named in the publication of the finding.
 - 2.2 The purpose of publishing such a decision is not to add further punishment for the member. It is to provide reassurance that the public interest is being protected and that where a complaint is made against a member of one of the professional bodies covered by the Taxation Disciplinary Scheme, there are defined, transparent procedures for examining the complaint in a professional manner and for imposing a sanction upon a member against whom a disciplinary charge has been proved.
 - 2.3 There are a number of reasons why the name of the member will normally be published:
 - Members of the participant bodies and the profession should be aware of the decision of the Disciplinary or Appeal Tribunal;
 - The public should have confidence in the disciplinary procedures applied by the TDB;
 - Such confidence is best promoted by openness in respect of the findings and orders made by Disciplinary and Appeal Tribunals.
3. Publication of information prior to a Disciplinary or Appeal Tribunal
 - 3.1 There is no publication of the decisions of the Investigation Committee. It does not sit in public and does not impose any sanctions.
 - 3.2 Where the Investigation Committee decides that there is a prima facie case of misconduct, inadequate professional service or unbecoming conduct which should be referred to a Disciplinary Tribunal that decision itself is not published. It is however the practice of most disciplinary bodies, including the TDB, to publish on their website details of forthcoming tribunal hearings and to include the name of the member, with brief details of the charges.

4. Disciplinary and Appeal Tribunals

- 4.1 Under the Taxation Disciplinary Scheme Regulations 2008, Regulation 25 provides that the Disciplinary and Appeal Tribunals will normally sit in public and Regulation 24 provides that decisions of the Tribunals will normally be published.
- 4.2 Regulation 24 also provides that a decision to dismiss the charge or to take no further action or to uphold an appeal should be published, but without naming the member. (Regulations 24 and 25 are reproduced at Annex A.)
- 4.3 It therefore follows that all findings and decisions reached by the Tribunals will normally be published.

5. Discretion for tribunals

- 5.1 Whilst Regulation 24 makes a presumption in favour of publishing the findings made by a Tribunal, there is a discretion not to order publication of the name of the member or appellant or the details of orders made against them.
- 5.2 This discretion should be exercised sparingly. For example, if the Disciplinary Tribunal decided that a particular case should be heard in private either in whole or in part, as it may do under Regulation 25, it may conclude that similar considerations would justify a decision not to publish its finding or to publish the finding but without naming the member.
- 5.3 A Tribunal might consider that it would be appropriate not to publish a finding or an order where in exceptional circumstances, both the conduct was not serious **and** publication might have an adverse impact on innocent third parties.
- 5.4 Similarly a Tribunal might exercise its discretion not to publish in exceptional circumstances, where the conduct was not serious **and** where publication would be unduly harsh **and** have an adverse impact on a member's health or safety
- 5.5 Any decision not to publish a decision should only be taken in response to a request from the member and if the Tribunal hearing the case or the appeal is satisfied that there are **wholly exceptional circumstances** which would justify an absence of publicity. The Tribunal will wish to be satisfied that all limbs of the tests to be applied must be satisfied. The Tribunal should state its reasons for a decision to with-hold publicity.

6. Procedures for publishing findings

- 6.1 Under the Regulations, no decision or order may be published until after the expiry of any time allowed for an appeal. If there is an appeal, publication will be deferred until after the disposal of that appeal. Once that period has elapsed, the normal procedure will be for the Executive Director to communicate the decision to the parent body to which the member belongs and to any other professional body of which he is a member. He will also arrange for an announcement to be made on the Board's website and in the journal Tax Adviser. In accordance with Regulation 24, the announcement will include the name of the member and describe the order or orders made against him. The description of the finding will include a brief account of any charges which have been found against him. The announcement will not include the name of the complainant or of anyone else concerned with the hearing.
- 6.2 The announcement may also be sent to the "house journal" for any other professional body of which the defendant is a member. In certain cases, where there is a significant public interest, the announcement may be sent to local newspapers. In exceptional cases, if the case is high profile or the member is a well-known personality, it may be appropriate to send the announcement to the national press.

7. Removal of findings from website

- 7.1 All findings will remain on the Board's website for a minimum of three years, from the date of the decision of the relevant Tribunal hearing. After three years, the finding will be removed, except in the case of any finding that results in or includes a sentence involving the expulsion or suspension of the member from membership of one of the participating bodies or the removal or suspension of the member from any money laundering or other register maintained by the participants. In such cases, the finding will remain on the Board's website indefinitely.

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July 2009

ANNEX A

24. Publication of findings and orders

- 24.1 Where a Disciplinary Tribunal or Appeal Tribunal makes an order under these Regulations, it shall order that a record of its order shall be published as soon as practicable in such manner as it thinks fit.
- 24.2 The record of the order shall normally be published without naming the Member:
- (a) where the Disciplinary Tribunal has dismissed the charge or ordered that no further action be taken on the complaint; or
 - (b) where the Appeal Tribunal has upheld in full an appeal by the Member
- 24.3 Unless the Disciplinary Tribunal or the Appeal Tribunal otherwise directs, any such publication shall state the name of the defendant or appellant and describe the order or orders made against him, but need not include the name of any other person concerned in the complaint or appeal.
- 24.4 Unless the Disciplinary Tribunal otherwise directs, no publication shall be made until after the expiry of the relevant appeal period referred to. If a valid notice of appeal under the Regulations is served then, unless the appeal is abandoned, no publication of the Disciplinary Tribunal's order shall be made until disposal of that appeal and then subject to the decision of the Appeal Tribunal.
- 24.5 If the Disciplinary Tribunal makes any direction limiting publication the TDB shall have a limited right of appeal in respect of that direction; such appeal shall lie directly to the Appeal Tribunal. The Appeal Tribunal shall have power to uphold, vary or overturn the original direction made.

25. Public Hearings

- 25.1 All hearings by a Tribunal shall be held in public, but the chairman of a Tribunal may exclude the press and public (but not the complainant) from all or any part of the proceedings if it appears to him desirable to do so in the interests of justice or for any other special reason.