

**TAXATION
DISCIPLINARY
BOARD**

**INDICATIVE SANCTIONS
GUIDANCE**

July 2020

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SECTION 1: INTRODUCTION

This Indicative Sanctions Guidance ('the Guidance') has been issued by the Taxation Disciplinary Board (the 'TDB') after consultation with members of the Disciplinary Panel, who are appointed to sit on the TDB's Disciplinary and Appeal Tribunals, and with members of the Professional Standards Committee of the Chartered Institute of Taxation ('CIOT') and the Association of Taxation Technicians ('ATT'). It has been updated in the light of responses to a consultation document issued in January 2020.

The Guidance is to be used by the Disciplinary and Appeal Tribunals ('the Tribunal') when they are considering which sanction(s) to impose upon an individual or firm against whom a finding has been made. It is a 'living document' which will be reviewed annually by the TDB and updated and revised when the need arises.

The Guidance is intended to produce a structured approach to decisions about the sanctions to be imposed once a finding has been made against a CIOT/ATT member¹.

It is important that sanctions should be consistent and proportionate. It is also important that a member, student, affiliate, or firm knows, prior to any decision being made, which sanctions are available to the Tribunal and which matters the Tribunal members may consider when coming to a decision.

Each case will be judged on its own facts. Members of the Tribunal must exercise their own judgement in making decisions, whilst having regard at all times to the Taxation Disciplinary Scheme Regulations in force at the time and any other relevant guidance issued by the TDB, including this Guidance.

The range of sanctions that is available to a Disciplinary or Appeal Tribunal is set out in Regulation 20.6. These are discussed in Section 3 of this guidance, with examples of their application to situations in Section 4. Decisions reached by these Tribunals over the last 10 years are summarised at Annex E.

This Guidance will be reviewed annually by the TDB. Minor changes including general updating will be publicised on the TDB's website; any significant changes will be subject to prior consultation, again publicised on the TDB's website and drawn to the attention of the TDB's main stakeholders.

The Taxation Disciplinary Board
PO Box 224, Rushlake Green, Heathfield, TN21 1DQ

July 2020

¹ In this Guidance, reference to 'member' is to be taken as including reference to individual members, students, affiliates and firms, unless specified otherwise.

SECTION 2: PURPOSE OF SANCTIONS

2.1 Like other professional disciplinary bodies, the TDB operates in the public interest. It therefore applies the following key principles in disciplining professional members:

- a) protecting the public
- b) upholding the proper standards of conduct in the profession
- c) maintaining the reputation of the profession

2.2 The TDB will always seek to operate efficiently and economically in discharging its responsibilities.

2.3 The purpose of imposing sanction(s) upon a member is not simply to discipline the individual or firm for any wrongdoing of which they or it may be culpable; nor is it intended to be punitive. Rather a key aim is to protect the public and maintain the reputation of the profession by sending a signal as to how serious the Tribunal judges the misconduct to be. In carrying out these roles, the Tribunal is maintaining the reputation of the profession. The Master of the Rolls stated in *Bolton v The Law Society* [1994] 2 ALL ER 486 that the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession.

Ethical principles

2.4 In considering whether a member may have fallen short of the required standards, the TDB pays particular regard to Professional Conduct in Relation to Tax ('PCRT'), developed and published by the CIOT, ATT and five other professional bodies, and to the Professional Rules and Practice Guidelines ("PRPG"), promulgated by the CIOT and ATT and published on their websites. Most charges brought against a member appearing before a Disciplinary Tribunal will allege a breach of one or more of the Professional Rules.

2.5 The CIOT and ATT reissued their Professional Rules and Practice Guidelines in 2018, in order to include the five key Ethical Principles which have been adopted by several other financial and accounting bodies. The five principles are:

- Integrity
- Objectivity
- Professional competence and due care
- Confidentiality
- Professional behaviour

2.6 PCRT sets out the professional standards that are expected of a member when undertaking tax work. It represents an industry standard of professional behaviour in tax matters. PCRT has been updated with a new digital structure to make it easier to navigate. The current edition is effective from 1 March 2019 and consists of the fundamental principles and the standards for tax planning.

2.7 PCRT is supported by supplementary help sheets²:

- [PCRT Help sheet A: Submission of tax information and Tax filings](#)
- [PCRT Help sheet B: Tax Advice](#)
- [PCRT Help sheet C: Dealing with errors](#)
- [PCRT Help sheet C2: Dealing with errors: members in business](#)
- [PCRT Help sheet D: Request for data by HMRC](#)
- [PCRT Help sheet E: Members' Personal Tax Affairs](#)

Proportionality

2.8 In deciding what sanction is appropriate in any individual case, the Tribunal must weigh the interests of the member, student, affiliate, or firm against the need for public protection. The Tribunal must have regard to the public interest. As noted above, this includes the protecting the public, upholding proper standards of conduct in the profession, and maintaining the reputation of the profession.

2.9 In order to ensure that any sanction imposed is proportionate to the level of seriousness of the misconduct found proved, taking into account all the circumstances of the case, the Tribunal should seek to ensure that the sanction imposed is the minimum necessary to achieve the purposes set out above. The sanctions available to the Tribunal are set out in Section 3; Section 4 outlines their applicability to categories of complaints.

Rehabilitation of Offenders

2.10 This Guidance, and the conduct of the TDB generally, has regard to the Rehabilitation of Offenders Act 1974. This Act primarily exists to support the rehabilitation into employment of reformed offenders who have not reoffended. Under the Act, following a period of time, most cautions and convictions may become spent. As a result, the offender is regarded as rehabilitated. There are several points to observe:

- The Act deals with *criminal* offences and penalties, not the *civil* offences and penalties that concern the TDB.
- Various types of posts, occupations and activities are Excepted from the general rule that spent cautions and convictions do not have to be disclosed. The listing includes the legal and financial sectors and so covers taxation work.
- Nonetheless the TDB thinks its sanctions should be applied with the principles of rehabilitation in mind and so that informs our guidance on areas such as publicity for cases where complaints have been upheld and sanctions imposed.

² The Help sheets listed are those available at 1 July 2020; reference should be made to the CIOT or ATT Professional Standards website for the latest versions <https://www.tax.org.uk/professional-standards/professional-rules/professional-conduct-relation-taxation> .

SECTION 3: DESCRIPTION OF THE SANCTIONS AVAILABLE

3.1 Under the Taxation Disciplinary Scheme Regulations 2014, there is provision for the Reviewer of the TDB to apply a fixed penalty in circumstances where there has been a breach of the participants'³ administrative requirements, rules, or procedures. The circumstances where such a penalty is considered appropriate are set out in Annex A. Such matters would normally only come before a Tribunal where there is evidence of repeated failures.

3.2 The Tribunal has the power to impose more than one sanction for the same offence. A fine may be imposed in addition to an order for an additional sanction in appropriate circumstances, for example, where the defendant has benefited financially as a result of the misconduct.

3.3 The Tribunal may make any one or more of the following orders:

(1) No further action

In all cases, the Tribunal may decide that the appropriate decision is to take no further action. This may be appropriate where, for example, the breach is relatively minor, took place many years ago, the public is not at risk and/or there would be no purpose served by ordering a sanction.

(2) Order to rest on file

This sanction is appropriate when a Tribunal finds the case proved, but the misconduct is regarded as minor and unlikely to be repeated. Provided that there is no risk to the public and the misconduct appears to have been an isolated incident, the Tribunal may order the matter to rest on file for a designated period (up to a maximum of three years). This means that no action will be taken unless, within the designated period, there is a further complaint against the member which is referred to the Disciplinary Tribunal. If the Tribunal then finds the member guilty of the more recent charges, it must take account of the previous case when considering sanction(s).

³ Participants here means the two sponsor bodies of the TDB, i.e. the CIOT and ATT. The following are examples of the complaints that may be regarded as an administrative failure:

- (a) Failure to submit a record of Continuing Professional Development ('CPD') when requested by a participant;
- (b) Failure to undertake or complete CPD;
- (c) Failure to carry or renew adequate professional indemnity insurance (PII) for a short period;
- (d) Minor infringement of the rules governing the designation of firms as Chartered Tax Advisers;
- (e) Failure to have in place all the administrative procedures required to ensure Anti-Money Laundering Compliance;
- (f) Failure to notify the participant that disciplinary proceedings have been upheld against them by another professional body to which the member belongs.

(3) Warning

A warning may be appropriate where the misconduct was minor, but the Tribunal nevertheless wishes to indicate that the behaviour was unacceptable.

Relevant factors to take into consideration (this list is not exhaustive) include:

- a) evidence of no loss to the client
- b) evidence of member's understanding and appreciation of failings
- c) misconduct was an isolated incident, not deliberate
- d) evidence of insight, including genuine expression of regret
- e) previous good history
- f) no repetition of such misconduct since the incident

(4) Order an apology

In cases where a client or a member of the public has been adversely affected by the misconduct of the member, the Tribunal may order the member to make a formal written apology. This sanction is unlikely to be used often, as there is likely to be some doubt as to the sincerity of an apology ordered by a Tribunal: apologies are best given spontaneously and as soon as it is apparent that the member has failed their client in some way. If the Tribunal considers that an apology would be appropriate, it should make it clear what aspects of the member's misconduct are to be covered by the apology and give the member an opportunity to make representations. The Tribunal may order that the apology should be approved in draft by the Chairman or by some other designated person before it is sent.

(5) Censure⁴

A censure is appropriate where the misconduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Tribunal that there is no⁵ risk to the public and similar relevant factors to those under 'Warning' are present:

- a) evidence of no loss to the client
- b) evidence of member's understanding and appreciation of failings
- c) misconduct was an isolated incident, not deliberate
- d) evidence of insight, including genuine expression of regret
- e) previous good history
- f) no repetition of such misconduct since the incident

The Tribunal should also be satisfied that the misconduct is unlikely to be repeated in the future.

The Tribunal may specify, with reasons, the length of time that the censure should remain on the TDB's record if they consider that the standard period of three years is inappropriate.

⁴ The TDB sanction is Censure; we note that in some other disciplinary schemes, the term 'Reprimand' is used.

⁵ For example, that the misconduct posed a risk to the public but has been addressed.

(6) Fine

The Tribunal may impose a fine as the only sanction or combine a fine with another sanction or sanctions. For example:

- (1) the Tribunal may decide that a particular sanction is appropriate, but that it should be combined with a fine to better reflect the seriousness with which it views the misconduct.
- (2) the Tribunal may decide that the seriousness with which it views the misconduct indicates a censure coupled with a fine.

The fine may reflect the amount by which the member has profited from the breach. For example, if a member has been carrying on public practice without professional indemnity insurance for a period, one element of the fine might reflect the cost of the insurance premiums they ought to have paid throughout the period.

If the Tribunal is considering imposing a financial penalty of any size, it should consider inviting the member to make any representations, supported by evidence, they feel are relevant about the level of the fine, including ability to pay. Once the Tribunal has decided the appropriate amount of a fine, it may be reduced after considering the member's financial situation. It may not be increased if the member appears to be able to afford more. If the member has not provided any documentary evidence to demonstrate their financial circumstances, a Tribunal is entitled to assume that they can pay whatever fine is ordered.

Note that the TDB has power to impose a fixed penalty on a member who is guilty of an administrative breach of regulations. Such penalties are standardised and are for matters that do not progress to the Investigation Committee stage and hence not to Disciplinary Tribunal. The TDB has published separate guidance on Fixed Penalties.

(7) Suspension of membership

Suspension of membership is appropriate when the misconduct is sufficiently serious to warrant temporary exclusion from membership but not so serious as to require permanent expulsion. For example, the Tribunal may consider that:

- (1) there is no risk of a recurrence of the misconduct; and
- (2) the protection of the public can be assured by a temporary exclusion from the benefits of membership.

In that case, the Tribunal may decide to suspend the member for a designated period, after which the member can apply to their professional body to resume their membership. The maximum period for any suspension is two years.

(8) Expulsion

Expulsion is the most severe sanction available. It is appropriate where this is the only means of protecting the public and/or the misconduct is so serious as to undermine confidence in the profession if a lesser sanction were to be imposed. Relevant factors to take into consideration (this list is not exhaustive) include:

- a) serious departure from relevant professional standards
- b) abuse of position/trust
- c) dishonesty
- d) persistent lack of understanding and appreciation of seriousness of actions or consequences

The Courts have reiterated that expulsion should be the normal sanction in a case where dishonesty has been proved, save in exceptional circumstances.

Consultation question 1

It has not been the practice of the TDB's Tribunals to set a period which must elapse before the expelled member may reapply for membership as it does not have the specific power to do so under Regulation 20.6(f)(vii). Arguably, the Tribunal can include such a recommendation in its Decision, but the TDB is inclined to propose adding a specific power to the Regulations to allow the Tribunal to do so, so as to put the matter beyond doubt. This would bring the TDB into line with various other regulatory bodies and Tribunals.

The TDB would be interested in views on whether the Tribunal should set such a period before a readmission application can be made when it expels a member; and, if so, whether it should do so as normal practice or only occasionally.

Consultation question 2

There are two main routes under which an expelled member's application for readmission could be considered:

Route 1

Such application initially must be made to the TDB for its confirmation that the period and any other matters laid down in the decision have been complied with; the application may then proceed to the former member's body. The TDB may convene a Disciplinary Tribunal to consider the case.

Route 2

The application is made direct to the member's former body for them to consider. As part of that consideration, the body would refer to the conditions attached to the decision of the TDB's tribunal; the body may contact the TDB for confirmation that those conditions appear to have been satisfied.

The TDB would be interested in views on which route is preferable – in essence, should the TDB's involvement in readmission applications be set or optional?

(9) Imposition of conditions on the member

The Tribunal has had power to allow the member to continue to practise as a professional member, but with certain restrictions. However, as the sanction has not been used, partly because of the practical difficulties inherent in monitoring compliance with the conditions, this sanction is considered to be no longer applicable to the Tribunal.

(10) Compensation

Where a charge of Inadequate Professional Service has been found proved, the Tribunal may order the member to pay compensation to the complainant⁶ to reflect any financial loss suffered as a result of the member's and/or firm's failure to observe proper standards.

Compensation is limited to a maximum of £5,000. It is intended to reflect any actual quantifiable loss which the complainant can show they have sustained, after taking account of any other avenues for redress available to the complainant (e.g. the payment to another accountant employed to rectify the member's errors). The availability of compensation is governed by the provisions of Regulation 25.

Consultation question 3

The TDB is considering the place of compensation orders in its range of sanctions. There are two broad issues:

- (1) Should the TDB have power to order compensation at all? Would it be preferable to leave the question of compensation to the courts, given that in some cases the sum available to the TDB Tribunal is likely to be a small fraction of the amount of a complainant's loss?
- (2) If the TDB does retain the power to award compensation, is the £5,000 limit (which has been in place for many years) still appropriate or should it be increased? If an increase is appropriate, to what? (Note that it is not considered that the TDB should have an unlimited power to award compensation.)

Any change under either of these options would require a change to the Taxation Disciplinary Scheme Regulations.

The TDB would be particularly interested in views on the application of compensation orders, which are often considered for findings of Inadequate Professional Service (see page 15 below) and other complaints.

⁶ A 'complainant' will be a client or former client in many situations, but also covers an affected fellow practitioner, a tax authority and CIOT/ATT.

(11) Recommendation of removal from a register

This sanction is expected to arise infrequently. It is intended to apply where a member or firm has been found to have breached the requirements of a particular form of registration carried out by the Institute or Association. As the various registers are maintained by the ATT and CIOT, the Tribunal can only recommend removal; it cannot order the member's removal.

(12) Other sanctions for students or other regulated persons

The Tribunal may order that a student or a person regulated by one of the member bodies is not granted membership status for a specified period, notwithstanding that they may otherwise be eligible for membership. In the case of a student, the Tribunal may order that a student is not eligible to sit any examination, or part of an examination, for a specified period. This sanction might be suitable where, for example, the student has not been removed from the register, but the Tribunal considers that they should not be permitted to sit examinations for a period of time. The Tribunal should give reasons for the period.

(13) Costs (there is further guidance on the award of costs at Annex C).

An order for costs is not a sanction. It is mentioned here for completeness as it is an order which the Tribunal will usually make where a finding has been made against the member. The general principles that the Tribunal will follow will be as laid down in the *Dove*⁷ case:

- It is not the purpose of an order for costs to serve as an additional punishment for the defendant, but to compensate the TDB for the costs incurred in bringing the proceedings; and
- Any order imposed must never exceed the costs actually and reasonably incurred.

As the TDB's costs are part of the costs incurred in bringing the proceedings, they will be included in the Tribunal's consideration. The TDB will always endeavour to operate efficiently and economically in carrying out its role.

As with the imposition of a fine, if the Tribunal is considering imposing a costs order, it should consider inviting the member to make any representations they feel are relevant about the level of the costs, including ability to pay. The Tribunal may decide to vary the level of costs after considering the member's financial situation. If the member has not provided any documentary evidence to demonstrate their financial circumstances, a Tribunal is entitled to assume that they can pay whatever fine is ordered.

(14) Publicity

Publication of a Tribunal decision is automatic where an allegation has been found proved, unless no further action was ordered, or the Tribunal has good reason to order that the defendant should not be named. Publicity is not a sanction, but it is mentioned here for completeness. The Board has issued separate guidance on the publication of Tribunal decisions: see Annex B.

⁷ R v Northallerton Magistrates Court ex parte Dove (1999) 163 JP 894

SECTION 4: CATEGORIES OF COMPLAINTS

4.1 This section sets out the categories of complaints that normally come before the Tribunal and gives guidance on the sanction that would normally be imposed if the allegation(s) are found proved or held to be proven. The Tribunal may consider more than one sanction, for example a fine in addition to another sanction.

4.2 The guideline sanction is for guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

4.3 The guideline sanction may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline. Some examples are given of relevant factors under a number of the complaint categories. The aggravating and mitigating factors listed are examples only and are not exhaustive. If there is previous disciplinary history, its relevance should be considered: it may be an aggravating factor.

4.4 Evidence of good character, including character references, are directly relevant to the Tribunal's consideration of sanction. In some cases they **may** also be relevant at the earlier stage, at which the Tribunal makes findings on the charges, when they should be produced to the TDB in advance of the hearing and the reason for which they are to be relied on explained clearly.⁸

(1) CRIMINAL CONVICTIONS (including findings of dishonesty by other disciplinary bodies)

A conviction for act(s) of dishonesty/ breach of trust/ money laundering

Any other offence committed in a professional capacity even though not followed by a prison sentence, suspended or not

Adverse findings by other regulatory bodies where the underlying conduct involves dishonesty, including breach of trust/money laundering

Any other offence followed by a prison sentence (suspended or not) or community penalty

Guideline: Expulsion

An offence not committed in a professional capacity nor followed by a prison sentence or community penalty.

Guideline: Suspension

⁸ See in particular *Donkin v The Law Society* [2007] EWHC 414 (Admin).

Comments

Tribunals should bear in mind that the Courts have restated on many occasions that the normal sanction where dishonesty is found to be proved is expulsion, save in exceptional circumstances.

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- Fraud
- Amount involved
- Defendant in a position of trust (e.g. as an employee or as a guardian for a vulnerable individual)
- Direct involvement in planned and calculated dishonesty

Mitigating factors

- Offence not committed in a professional capacity
- No issue of professional integrity arises
- Admission of guilt; insight into wrongdoing; co-operation with all prosecuting authorities; restitution to victim

Any personal mitigation will be taken into account (including any character references).

(2) CRIMINAL CONVICTIONS UNRELATED TO PROFESSIONAL WORK

Misconduct which resulted in a conviction but arose in a member's private life, as opposed to his professional work, needs careful consideration. The member has been dealt with for the offence, and the criminal court has imposed its sentence. However, the Tribunal must deal with the complaint because the member is in breach of the regulations. The role of the Tribunal is to balance the nature and gravity of the offence and its bearing, if any, on the member's fitness to practise as a tax adviser; and to weigh up the need to protect the public and confidence in the reputation of the profession against the need to impose a further penalty and its consequential impact on the ability of the member to practise his profession.

When considering its decision on whether to impose a penalty and if so the appropriate level, the Tribunal should consider the following:

- The nature of the offence for which the member has been convicted, its gravity and the sentence imposed by the Court.
- The circumstances surrounding the offence.
- Whether the offence and conviction affect the member's professional work or his ability to practise as a tax adviser in the future (e.g. risk of harm to clients, need to protect the public, soundness of member's judgement).

- Whether the offence and conviction of the member diminish the reputation of, or the public's confidence in, the CIOT, the ATT or the profession.

Any personal mitigation will be taken into account (including any character references).

(3) LACK OF PROFESSIONAL COMPETENCE

Repeated seriously defective work

Guideline: Expulsion

Single occurrence of work of a seriously defective standard

Lesser forms of poor accounting or tax work

Failure to have regard to the proper statutory, professional, or technical requirements

Guideline: Censure

Comments

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- Whether any loss to clients or third parties
- Consequences of incorrect/poor tax advice
- Number of clients affected and the period of time involved

Mitigating factors

- Inadvertent/minor breach of the regulations
- Steps taken to correct matters
- Subsequent work satisfactory

Any personal mitigation will be taken into account (including any character references).

(4) FAILURE TO TAKE DUE CARE

The types of failure likely to fall under this heading include:

- Failing to carry out work commissioned by, paid for, or promised to a client
- Defective accountancy work (e.g. poor quality, late filing, not in statutory format, not complying with provisions of PRPG)
- Poor advice/delay in advising on client's affairs/neglect of client's affairs
- Failing to exercise adequate control and supervision over a practice
- Failing to ensure that fees are fair in relation to work performed for client
- Expressing a professional opinion not justified by the evidence

- Failing to respond expeditiously or adequately or at all to professional correspondence, including correspondence from a successor adviser, from the CIOT or ATT or from the TDB.

Guideline: Censure

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- Nature of inefficient or incompetent work
- Attempt to cover up errors
- Financial loss to client or third party
- Period of time and number of sets of accounts
- Deliberate/reckless
- Size of loss/error involved

Mitigating factors

- No loss or client promptly recompensed for any loss
- Had taken professional advice
- Client unhelpful in providing accounts or gave insufficient or misleading information or was otherwise uncooperative
- Loss of files due to external factors (e.g. fire, flood, etc)

Any personal mitigation will be taken into account (including any character references).

(5) INADEQUATE PROFESSIONAL SERVICE (“IPS”)

Failing to provide an overall standard or quality of service to which the client is entitled

Guideline: Censure and, if appropriate, Compensation

IPS is intended to deal with cases where the member has provided poor service to the client and/or this falls short of the standard of service which is expected of a professional tax adviser. Where the client can demonstrate a tangible loss as a result of the IPS, the Tribunal may order the member to compensate the client up to a maximum of £5,000.

The Tribunal also may consider other sanctions available to it, including ordering the member to apologise to their client or fining the member in addition to or instead of another sanction.

Comments

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- Significant effect on client
- Vulnerability of client

- Motivation of financial gain

Mitigating factors

- Immediate apology
- Early remedial action

Any personal mitigation will be taken into account (including any character references).

(6) FAILURES IN DEALING WITH CLIENT MONIES

The types of failure likely to fall under this heading include:

- Unauthorised diversion of funds to own account, other estates or third parties
- Drawing unauthorised remuneration
- Misuse of company funds
- Misappropriation of funds from client or employer
- Failure to properly/adequately account for monies held on behalf of client
- Serious failings/errors in administration of a trust
- Failing to repay client monies in accordance with terms of agreement

Guideline: Expulsion

- Client monies not held in designated client account
- Failure to pay interest due on client monies

Guideline: Censure

Comments

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- Large number of clients involved
- Benefit to the practitioner resulting from improper retention of funds
- Failure to deal promptly with the matter once notified of conduct
- Loss to clients/third parties
- Sums held for a long period
- Account overdrawn

Mitigating factors

- Matters immediately rectified and procedures introduced to avoid recurrence
- Clients compensated for any loss

Any personal mitigation will be taken into account (including any character references).

(7) UNETHICAL CONDUCT

The types of failure likely to fall under this heading include:

- Deceiving/ misleading TDB, or the member's professional body, or a regulator
- Dishonesty
- Failing to act with integrity
- Serious lack of objectivity/ independence or conflict of interest
- Providing false or misleading information
- Improperly accessing confidential information
- Misuse of confidential information

Guideline: Expulsion

- Less serious lack of objectivity/independence or conflict of interest
- Breach of confidentiality
- Unprofessional behaviour (e.g. lack of courtesy and consideration)

Guideline: Censure

Comments

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- High public importance
- Information provided deliberately/recklessly
- Abuse of position of trust held
- Size of loss and/or error involved

Mitigating factors

- No loss suffered
- Action taken at request of client or employer
- Information provided carelessly/accidentally
- Discourtesy was isolated incident and out-of-character

Any personal mitigation will be taken into account (including any character references).

(8) OTHER BREACHES OF BYE-LAWS OR REGULATIONS

The types of failure likely to fall under this heading include:

- Failure to comply with an order made by a previous TDB Tribunal
- Failure to co-operate with a disciplinary investigation
- Failure to comply with a court order or satisfy a judgment debt without reasonable excuse
- Failure to hold adequate or any PII

Guideline: Expulsion

- Failure to inform ATT or CIOT of bankruptcy or disqualification as a director or trustee
- Failure to inform ATT or CIOT of criminal proceedings or disciplinary action by another regulatory body
- Failure to comply with CPD requirements
- Failure to provide professional clearance or transfer information
- Breach of AML regulations (not involving criminal activity or dishonesty)

Guideline: Censure

Minor breaches of the administrative requirements of the ATT and CIOT will often be dealt with under the TDB's financial penalty arrangements. The Disciplinary Tribunal therefore is likely to see only those cases where the member has failed to accept a financial penalty or the matters in question are sufficiently serious to require a more severe sanction. Where a member has been disciplined by another regulatory body, the Tribunal may have regard to the sanction imposed by the other body.

Comments

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- Period of time involved
- Deliberate or reckless disregard of order or regulations

Mitigating factors

- Steps swiftly taken to rectify breach

Any personal mitigation will be taken into account (including any character references).

(9) INAPPROPRIATE PERSONAL CONDUCT

Acting in such a way as to bring the member, the ATT, the CIOT or the tax profession into disrepute

Guideline: Censure

Comments

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- High public importance
- Deliberate/reckless

- Position of trust held

Mitigating factors

- No loss suffered
- Accidental
- Action taken at request of client or employer

The aggravating and mitigating factors listed are examples only and are not exhaustive. If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

(10) STUDENT ISSUES

Misconduct relating to examinations, such as:

- Impersonation of another student
- Obtaining improper assistance from another person
- Plagiarism
- Unauthorised materials in the possession of the student with intention to cheat
- Student holding out as CIOT or ATT Member
- Failing to comply with instructions from invigilator

Guideline: Removal from Register

If the Tribunal finds that the student was in possession of unauthorised material during an examination but is satisfied that there was no intention to cheat, then in the absence of other misconduct factors a lesser sanction would normally be appropriate.

Guideline: Warning, Censure or Suspension should all be considered

Comments

Examples of possible relevant aggravating and mitigating factors relevant to the charge(s):

Aggravating factors

- Failure to rectify conduct, where rectification is possible

Mitigating factors

- Rectified conduct immediately, where rectification is possible
- Evidence that there was no intention to cheat or deceive

Any personal mitigation will be taken into account (including any character references).

GUIDANCE ON FIXED PENALTIES

1. Under the Taxation Disciplinary Scheme Regulations 2014, there is provision for the Reviewer of the Taxation Disciplinary Board ('TDB') to apply a fixed penalty in circumstances where there has been a breach of the participants'⁹ administrative requirements, rules, or procedures.

Background

2.1 The relevant provisions are set out at Regulations 3.11—3.15. These provide that if the Reviewer considers that the only complaints raised with him are breaches of the participants' administrative requirements, rules, or procedures, he may impose a financial penalty ('the Decision') on the member up to a maximum of £500 for each breach.

2.2 Payment must be made within 14 days unless the Reviewer grants an extension.

2.3 If the member objects to the Decision, they may request in writing that the complaint be referred to a Disciplinary Tribunal. The request must be sent to the Reviewer within 14 days of receipt of the decision of the Reviewer. Such a request will have no effect unless it states the grounds under which the Decision is to be reviewed. The only grounds under which such a request may be made are either:

(a) that the Decision of the Reviewer was unfair or unreasonable;
or

(b) that new evidence which could not have been produced when the Reviewer reached his Decision has become available and that evidence would materially have affected the Decision.

2.4 If such a case is referred to a Disciplinary Tribunal, Regulation 9 sets out a simplified procedure for taking the case forward.

Nature of administrative breaches

3.1 The main issue to be considered is what constitutes a breach of the participants' administrative requirements, rules, or procedures. Many complaints of misconduct will entail some breach of the participants' rules, as set out in the Professional Rules and Practice Guidelines ('PRPG'). All serious allegations of such breaches will be considered under the normal procedures of the TDB for dealing with complaints, as described in Regulations 3.1—3.10.

3.2 The reference to administrative requirements, rules or procedures is intended to relate to breaches of provisions which have been introduced by the participants for the sound regulation of the profession and of the participants' membership, but which do not impinge directly upon the public. Such complaints will usually be referred by one of the participants,

⁹ Participants here means the two sponsor bodies of the TDB, i.e. the CIOT and ATT.

having discovered that the member may have failed to take some action required under its internal regulations.

3.3 The following are examples of the complaints that may be regarded as an administrative failure:

- (a) Failure to submit a record of Continuing Professional Development ('CPD') when requested by a participant;
- (b) Failure to undertake or complete the required amount of CPD hours;
- (c) Failure to carry or renew adequate professional indemnity insurance (PII) for a short period;
- (d) Minor infringement of the rules governing the designation of firms as Chartered Tax Advisers;
- (e) Failure to have in place all the administrative procedures required to ensure Anti-Money Laundering Compliance;
- (f) Failure to notify the participant that disciplinary proceedings have been initiated or completed by another professional body to which the member belongs.

3.4 This is not intended to suggest that such failings are trivial. Each complaint will need to be examined on its merits; however, it is important that complaints are dealt with proportionately.

3.5 The fixed penalty arrangements are intended to provide a quick and effective remedy for what are essentially minor failings largely administrative in character. These failings may often arise through ignorance or inadvertence. If, for example, a member had practised for many months without carrying adequate Professional Indemnity Insurance ('PII'), that would be a serious disciplinary failing, since it would be likely to put the public at risk; it would therefore be dealt with as a normal complaint for investigation by the Investigation Committee. By contrast, if the member had delayed in renewing their insurance cover for only a few days and quickly rectified the situation, without any claims being affected, that may be regarded as an administrative breach.

3.6 Cases of failing to notify disciplinary proceedings have regularly been considered by the TDB. Such cases are usually referred by the participants and have previously been considered by the Investigation Committee. It is therefore normal that where the disciplinary proceedings of the other professional body do not involve tax and where the member has apologised for or explained their failure to notify the participants, this should be dealt with by means of a fixed penalty. However, if the case does involve tax or there is a clear risk to the public, the case will go to the Investigation Committee to consider whether further disciplinary action is appropriate.

Size of fixed penalty

4.1 It is envisaged that for a first offence the penalty will be £300 for a straightforward case of a single breach and £500 for a complex case. This will be made up of a fine of £200, plus a contribution starting at £100 and up to a maximum of £300 for the time spent by the Reviewer in processing the case.

4.2 For a second similar offence within a five-year period, the fine element will be doubled, giving a penalty of £500 for a straightforward case or £700 for a complex case.

4.3 These figures would be applied to each individual breach referred to the TDB.

4.4 If there were a third offence by a member within a five-year period, the complaint would go forward in the normal way to the Investigation Committee to decide upon any further disciplinary action.

PUBLICATION OF DISCIPLINARY AND APPEAL DECISIONS

1. This guidance advises members of the Disciplinary Panel on the Taxation Disciplinary Board ('TDB') policy that applies 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 naming the member. Disciplinary findings are published in a document called 'Decision and Reasons' ('Decision').

2.2 The purpose of publishing the Decision is not intended to be punitive. 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. Publication is intended to advance open justice and to reassure the public that its interest is being protected. Open justice demonstrates to the public that complaints against members covered by the Taxation Disciplinary Scheme are scrutinised in a professional manner following defined, transparent procedures and that sanctions are imposed on members when a disciplinary charge is found proved.

2.3 There are several reasons for publishing the name of the member:

- Members of the public, the participant bodies¹⁰ and the profession should have direct access to the Decision.
- 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.

2.4 All of the above will be carried out with regard to, and in compliance with, the requirements of the General Data Processing Regulation ('GDPR').

3. Publication of information prior to a Disciplinary or Appeal Tribunal

3.1 Decisions of the Investigation Committee ('the Committee') are not published. The Committee does not sit in public and does not impose sanctions.

3.2 Where the Committee decides that there is a prima facie¹¹ case of misconduct, inadequate professional service, and/or unbecoming conduct which should be referred to a Disciplinary Tribunal, that decision itself is not published. It is however the practice of most

¹⁰ The participant bodies are the TDB's two sponsors, the CIOT and ATT

¹¹ A prima facie case is defined in the Regulations as '...a factual allegation or series of factual allegations which, if proved, would result in the Defendant's being guilty of a disciplinary offence.'

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 2014 (amended 2016), Regulation 29 provides that the Disciplinary and Appeal Tribunals (the Tribunals) will normally sit in public and Regulation 28 provides that decisions of the Tribunals will normally be published.

4.2 Regulation 28 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 28 and 29 are reproduced at Annex D.)

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 28 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 will 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 29, 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 and/or with other redactions.

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 **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 have been met. The Tribunal must state its detailed reasons for its decision to withhold publicity.

6. Publicity for fixed penalties

6.1 As set out in Annex A, the TDB may levy fixed penalties for administrative breaches of regulations. These include failure to submit a record of Continuing Professional Development ('CPD') when requested by a participant and failure to have in place all the

administrative procedures required to ensure Anti-Money Laundering ('AML') compliance. (A fuller list can be found at para 3.3 of Annex A.)

6.2 A typical penalty for such a breach is £300-500, increased for a second breach within five years to £500-700.

6.3 The TDB does not consider such breaches and the resulting penalties warrant publicity for the member in question. However, should a member incur a third breach within a five-year period, that will normally result in a referral to the Committee. That may result in a Disciplinary Tribunal and as such the normal presumption of publicity would apply.

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, including any appeal to the High Court.

6.2 Once the period for an appeal has elapsed, or the appeal has been disposed of, the normal procedure will be for the Executive Director to communicate the Tribunal's decision to the member's participant body and to any other professional body of which they are a member. The Executive Director will also place an announcement on the TDB's website and in the journal Tax Adviser. In accordance with Regulation 28, the announcement will include the name of the member and describe the order or orders made against them. The description of the Tribunal's decision will include a brief account of any charges which have been found against them. The announcement will not include the name of the complainant or of anyone else concerned with the hearing.

6.3 The announcement may also be sent to the "house journal" for any other professional body of which the defendant is a member.

7. Removal of Decisions from website

7.1 All decisions will remain on the Board's website for a minimum of three years, from the date of the Decision of the Tribunal hearing. After three years, the decision will be removed, except in the case of any finding that results in or includes a sanction 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 Decision will remain on the TDB's website indefinitely.

Consultation question 4

The TDB has heard views that maintaining a record on the Board's website indefinitely in cases of expulsion or suspension goes against the principles of the Rehabilitation of Offenders Act. As noted above in Section 2 (page 5), that Act deals with criminal offences rather than civil; also, the taxation profession is excepted from the non-disclosure of spent cautions and convictions. There is also an argument that a potential client of an adviser who has been expelled or suspended in the past has a right to know of that sanction when considering whether to deal with the adviser.

The TDB is inclined to maintain the public record of a member's expulsion indefinitely, even if that member is readmitted. For a suspension, the TDB is inclined to delete the record of a suspension, if the member resume membership, after a period following readmission equivalent to three years or the period of suspension, whichever is longer.

The TDB would welcome views on this area and its guidance.

GUIDANCE ON AWARDING COSTS

This Annex sets out guidance for Disciplinary and Appeal Tribunals on the award of costs.

1. Introduction

- 1.1 An order for costs is not a sanction. It is an order which the Tribunal will usually make where a finding has been made against the member. As the TDB's costs are part of the costs incurred in bringing the proceedings, they will be included in the Tribunal's consideration. The Board will always endeavour to operate efficiently and economically in carrying out its role.
- 1.2 As with the imposition of a fine, if the Tribunal is considering imposing a costs order, it should consider inviting the member to make any representations they feel are relevant about the level of the costs, including ability to pay. The Tribunal may decide to vary the level of costs after considering the member's financial situation. If the member has not provided any documentary evidence to demonstrate their financial circumstances, a Tribunal is entitled to assume that they can pay whatever costs are ordered.

2. Powers to award costs

- 2.1 Regulation 20.6(f) (xii) of the Taxation Disciplinary Scheme Regulations 2008 as amended gives a Disciplinary Tribunal power to award costs in dealing with a defendant against whom a charge has been proved.
- 2.2 Under Regulation 24.9, an Appeal Tribunal may affirm, vary, or rescind any costs order made by a Disciplinary Tribunal or make any such order for costs as it thinks fit.
- 2.3 Regulation 27 sets out the procedures for implementing a cost order made by a Disciplinary or Appeal Tribunal. This Regulation is reproduced at Annex A to this guidance.

3. Discretion

- 3.1 The presumption that an unsuccessful defendant should pay costs is based on the principle that the majority of professional members should not subsidise the minority who, through their own failings, have brought upon themselves disciplinary proceedings.
- 3.2 The Disciplinary Tribunal's power to award costs against a defendant is discretionary. However, its discretion must be exercised in accordance with the principles of reason and justice. In general, in line with the principle that the polluter pays.
- 3.3 **The general principle is that it would require exceptional circumstances for a Tribunal not to award costs against an unsuccessful defendant** and require their immediate payment. If the Tribunal decides not to award full costs against an unsuccessful defendant, it must give reasons for this decision.

4. Main factors to be taken into account in deciding on the award of costs

- 4.1 The recovery of costs is subject to the overriding principles that they are **appropriate and were reasonably incurred**.
- 4.2 In deciding what order to make about costs, the Tribunal may have regard to the conduct of the parties before and during the proceedings. The primary concern in making an order for costs is to do justice between the parties.
- 4.3 It should be noted that the TDB operates under a principle that it will endeavour at all times to operate efficiently and economically. This does not mean that the TDB will seek at all times to minimise its costs, as that may hinder its work, but it will always take care not to incur unnecessary costs.

5. Constituent elements of costs

- 5.1 In the TDB's disciplinary procedure, the TDB is the prosecuting authority. Since there is only a limited power to award costs against the TDB (see Paragraph 7 below), the issue which the Tribunal will normally consider is the award of costs from the defendant to the TDB.
- 5.2 The costs of the TDB in any proceedings before a Disciplinary Tribunal may comprise the following:
 - The TDB's legal expenses as prosecuting authority
 - The costs of TDB staff in processing the case
 - The expenses of the prosecution's witnesses in attending the hearing
 - The fees and expenses of any prosecution expert witnesses
 - An appropriate proportion of the fees and expenses payable to members of the Disciplinary Tribunal
 - An appropriate proportion of the fees and expenses payable to members of the Investigation Committee in originally considering the complaint.
- 5.3 Tribunal members will be given a breakdown of the costs prepared by the Secretary. (A specimen form is attached at Annex B, together with explanatory notes.)
- 5.4 A copy should be given to the defendant, and the defendant should be given an opportunity to address the Tribunal before the Tribunal makes an order based upon it as to why he should not be liable to pay costs or any part of them, although he may not adduce fresh evidence after the issues have been decided.
- 5.5 In a case where some charges are proved but others are not, the Tribunal will need to consider whether it would be reasonable to abate the costs for which the defendant is liable. In general, it would be appropriate to reduce the costs only if the majority of the charges, or the most serious charges, are not proved. If most charges are proved, or the most serious charges are proved, the Tribunal should consider carefully before making an order for a reduced award of costs and explain its reasons for so doing. Provided that the majority of charges, or the most serious charges, are proved, the Tribunal hearing will have been justified and thus it will be reasonable for the defendant to bear the costs associated with bringing the case before the Tribunal.

- 5.6 If a member challenges a costs order on the grounds that he lacks the means to pay the sums required, the Tribunal **must require evidence**. For this reason, if he is likely to seek to challenge a costs order, a member will be advised to come to a hearing with some documentary proof of his or her financial circumstances. If a member does not provide proof of financial means, a Tribunal is entitled to assume that he is able to meet any financial penalty and/or costs that it orders

6. Payment by instalments

- 6.1 The procedures for enforcing cost orders are set out in Regulation 27. A defendant against whom a cost order is made is entitled to request the right to pay by instalments. The Tribunal has discretion to allow payment by instalments.
- 6.2 In the absence of a direction by the Tribunal in relation to instalment payments, the Executive Director has, on a subsequent application by the defendant, discretion to allow payment by instalments. Exercise of such discretion should be reported to the Board of the TDB at the next available Board meeting.
- 6.3 Under regulation 27.6, any unpaid costs will bear interest from the date at which they become due. It is the policy of the TDB to seek to enforce any costs order in the County Court.

7. Costs against the TDB

- 7.1 Under Regulation 27.7, there is power to order any party to the proceedings to pay costs if the Tribunal considers that its conduct has resulted in wasted costs.
- 7.2 As the TDB is one of the parties at the Tribunal stage, it is possible for the Tribunal to make a costs order against the TDB. However, Regulation 27.7 is limited by Regulations 20.5 and 24.10, which provide that the Tribunal may **not** award costs against the TDB unless it is of the opinion that the charge against the member was brought **maliciously or without justification**. The fact that a charge is dismissed by a Tribunal does **not** in itself constitute grounds for concluding that the charge was brought without justification.
- 7.3 Cases in which a Tribunal considers that the TDB has brought the charge maliciously or without justification are likely to be extremely rare, particularly since every case coming before a Tribunal will have first been considered by the Investigation Committee, who will have decided that there was a prima facie case to answer.
- 7.4 The case law relating to costs against a regulator is consistent with this approach. The Court of Appeal has stated that unless there is dishonesty or lack of good faith, a costs order should not be made against a regulator unless there is good reason to do so.¹²

¹² See *The Competition and Markets Authority v Flynn Pharma Ltd and Pfizer Inc* [2020] EWCA Civ 339 and *Baxendale-Walker v Law Society* [2007] EWCA Civ 233; the Irish case of *Teaching Council of Ireland v MP* [2017] IEHC 755 also considered the issue.

8. Format for calculating costs of the TDB

Date of hearing..... Name of Defendant.....

Ref	Date	Description of costs	£
		Costs of presenter (Fees)	
		Costs of presenter (Disbursements)	
		Witness expenses	
		Disciplinary Tribunal costs (Appropriate fees, expenses and meeting room hire)	
		Investigation Committee costs (Appropriate fees, expenses and meeting room hire)	
		Administrative costs: Costs of Reviewer	
		Administrative costs: Costs of Secretary to Disciplinary Tribunal	
		Other costs (specified)	
		Other costs (specified)	
		TOTAL	£ _____

9. Notes to the calculation of costs

9.1 The following notes explain how the different components have been calculated. References to “Tribunal” shall include the Interim Orders Panel, the Disciplinary Tribunal and the Appeal Tribunal, and references to hearings is to hearings or meetings of any of them.

9.2 The fees and expenses incurred by the TDB in prosecuting a case include the costs of the lawyer who is presenting the case. His/her fees are based upon an hourly rate agreed with the TDB, and any additional expenses incurred will require receipts.

9.3 In the case of witnesses, costs may include the reasonable costs of their travel, accommodation, meals and refreshment and demonstrable loss of earnings.

9.4 In cases where the prosecution requires an expert witness, the Tribunal will need to judge objectively whether it was necessary to instruct an expert witness. If at the last minute an expert witness is deemed unnecessary, he may well charge a cancellation fee, in which case the Tribunal may decide not to allow such costs unless it is clear that the expert has suffered actual loss as a result of the late cancellation.

9.5 The reasonable costs of the hearing will normally be recoverable. These will include the following:

- (i) The cost of the Tribunal. This is around £1,750 per day. This figure includes the chairman's fee for drafting the Tribunal's decision(s) which will depend on the complexity of the case.
- (ii) The travel costs of the Tribunal (an average of £75 per member)
- (iii) If the hearing involves a recorder/secretary, their fee will be charged.
- (iv) The Secretary to the Tribunal charged at £600 per day.
- (v) Room hire costs

9.6 The TDB will also charge a proportionate contribution to its administrative costs, starting at £200 for a basic case but for more complex cases the charge will be whatever costs it thinks appropriate in the circumstances.

9.7 The role of the Investigation Committee in deciding whether there was a prima facie case to answer constitutes an indispensable element of the disciplinary process. Its reasonable costs should be included on a similar basis to those of the Disciplinary Tribunal. The average cost of a day meeting of the Committee is £1,650 for a 3-member panel but this will increase if a 5-member panel is involved. Members' travel costs and room hire costs will be added. The total costs will be split over the number of cases heard at the relevant meeting and an appropriate proportion added to the relevant Tribunal costs.

9.8 The TDB directly incurs costs through the involvement of its staff in its disciplinary procedures. Under the Regulations, it is the Reviewer who undertakes the administration of the case up to the Investigation Committee stage. Once the case is referred to a Disciplinary Tribunal, it will be processed by the Secretary to the Disciplinary Tribunal. Standardised costs will be charged, based upon the complexity of the case.

9.9 For most cases, where there are two rounds of correspondence involving both the member and the complainant, the Reviewer spends on average 7 hours preparing the case prior to the IC meeting; this would cost the TDB approximately £350. In a straightforward case, with no complications and little correspondence, the Reviewer would spend on average 2-3 hours preparing the case prior to the IC meeting; this would cost the TDB approximately £150. If the case is particularly complex, with more substantial detailed information to assess, the Reviewer might spend up to 12 hours prior to the IC hearing; this would cost the TDB around £600. In a small number of cases, the IC may itself request additional information and consider that information at a further meeting, in which case additional costs will be incurred.

9.10 The Secretary to the Tribunal instructs the lawyer presenting the TDB's case and would probably spend an average of 10 hours preparing each case prior to the hearing and for dealing with post-hearing matters. The cost to the TDB would be approximately £500. If the case is complex, involves witnesses, or a considerable volume of papers or the hearing is for more than one day, the cost to the TDB will be more.

Extract from The Taxation Disciplinary Scheme Regulations 2014 (as amended)

23. Costs

- 23.1 Any costs which the Disciplinary Tribunal or Appeal Tribunal orders to be paid shall, unless a longer period for payment (whether by instalments or not) is allowed by the order, be paid within 28 days of the service of the order upon the defendant, participant or appellant, as the case may be.
- 23.2 If within the period allowed, a defendant serves notice of appeal against an order made by a Disciplinary Tribunal then a costs order shall not become payable until the appeal has been determined under these Regulations, it shall then be payable, if at all, in accordance with the following provisions of these Regulations.
- 23.3 If, before the appeal has been determined, the appellant by notice withdraws the notice of appeal, the Disciplinary Tribunal's order for payment of costs shall take effect at the end of the period of 14 days beginning with the date on which the notice of withdrawal is served on the TDB.
- 23.4 Any costs ordered by the Appeal Tribunal, together with any unpaid costs ordered by the Disciplinary Tribunal, or so much, if any, of those unpaid costs as remain payable after any reduction or cancellation shall, unless a longer period for payment (whether by instalment or not) is allowed by order of the Appeal Tribunal, be paid within 28 days.
- 23.5 Where any costs ordered under these Regulations are payable by instalments and any instalment is not received by the due date, the whole of those costs or, as the case may be, so much of them as then remain unpaid, shall become due for payment.
- 23.6 Any costs or any unpaid balance of such costs not paid by the due date shall bear interest from that date until payment in full, such interest to be at the rate determined by the TDB under Regulation 27.1.
- 23.7 Where the Disciplinary Tribunal or Appeal Tribunal considers that the conduct of any party has resulted in wasted costs being incurred by another party to the proceedings it may order that other party to pay costs, in full or in part, to any party who has incurred wasted costs, subject to the provisions of Regulations 15.8 and 20.8(d).
- 23.8 Any such application for a wasted costs order must be made with a schedule of all costs applied for; and the party against whom the order is sought must be given reasonable opportunity to reply.

28. Publication of findings and orders

28.1 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.

28.2 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

28.3 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.

28.4 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.

28.5 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.

28.6 The TDB may publish information about forthcoming Tribunal hearings, including the names of Defendants and brief details of the Charge or grounds of appeal.

29. Public Hearings

29.1 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.

TDB INDICATIVE SANCTIONS GUIDANCE - PREVIOUS DECISIONS

This Annex gives a brief summary of decisions by the Tribunals over the last 10 years, tabulated by category of complaint.

1A - Criminal convictions

Year	Case ref.	Tribunal findings	Sanction
2010	2010/13	Conviction for theft from employer	Expulsion
2012	2010/33	Conviction for theft from charity fund of which he was treasurer	Expulsion
2012	2011/18	Conviction for fraud; failure to disclose prior disciplinary action when joining CIOT; failure to disclose bankruptcy	Expulsion
2012	2012/01	Conviction for cheating the public revenue by dishonestly inflating share values	Expulsion
2012	2012/05	Conviction for theft from charity fund of which he was treasurer	Expulsion
2013	2012/27	Conviction for insider dealing	Expulsion
2013	2012/24	Conviction for cheating the public revenue by claiming tax rebates for non-existent pension funds	Expulsion
2013	2013/11	Conviction for cheating the public revenue by claiming VAT refunds for non-existent trades	Expulsion & censure
2013	2013-13	Conviction for cheating the public revenue by falsifying documents relating to the Construction Industry Scheme	Expulsion & censure
2013	2013-15	Conviction for kidnapping	Expulsion & censure
2014	2013-39	Conviction for falsifying documents and cheating the public revenue	Expulsion
2016	2015/13	Conviction for fraud by abuse of position – 8 months imprisonment (suspended) / Failure to notify TDB	Expulsion
2016	2016/04	Conviction for conspiracy to cheat the public revenue (x 4) – 8 years imprisonment / Failure to notify TDB	Expulsion
2016	2016/07	Criminal conviction – pornographic material – 14 months imprisonment (suspended)	Expulsion
2016	2016/09	Conviction for making/possessing indecent photographs – 12 months imprisonment (suspended)	Censure
2018	2017/27	Conviction for strict liability offence of not having valid travel ticket in compulsory ticket area	No further action
2019	2018/07	Conviction for sexual assault; failure to notify ATT; failure to inform of proceedings brought by another regulator	Expulsion

2018	2018/08	Illegal sexual activity; criminal convictions; 11 years imprisonment	Expulsion
2020	2019/21	Theft from employer; conviction for fraud & abuse of position; suspended prison sentence; failing to notify TDB	Exclusion from student register

1B. Findings of other professional bodies

2010	2009/08	Failure to report expulsion by two other disciplinary bodies or to cooperate with TDB	Expulsion
2010	2010/06	Failure to report expulsion by another disciplinary body for fraudulent activity and dishonesty	Expulsion
2010	2010/08	Failing to state on student application form that he had been the subject of disciplinary proceedings by other regulatory bodies	Expulsion
2012	2011/17	Failing to report disciplinary action by ICAEW for failure to respond to successor adviser; failure to respond to correspondence from TDB	Censure
2017	2016/11	Failed to report expulsion from another professional body for professional misconduct; discreditable conduct; failure to respond to TDB	Expulsion
2019	2019/09	Failure to inform of consent order made by another professional body; failure to respond to correspondence from TDB	Warning
2020	2019/11	Failure to inform CIOT of disciplinary action brought by another professional body; failed to avoid action that discredits the profession; dishonesty before IO panel	12 months suspension

2 Competence

2012	2011/02	Submission of invalid claim for tax relief: failure to warn client of risk of rejection by HMRC	Censure
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3 Failure to take due care / uphold professional standards

2010	2009/10	Discourtesy by failing to respond to a successor adviser or to disclose adequate information	Censure & fine (£500)
2010	2009/15	Failure to carry out work promised to client	Order to apologise
2010	2009/01	Supplying false information to client; inability to justify fees; failure to disclose disqualification as a director; failure to supply requested material to TDB	Censure & fine (£2,500)
2011	2010/11	Failure to respond to client who was in dispute with business partner	Warning

2012	2010/26	Alleging illegal activities by complainants when not professionally competent to do so.	Censure & apology
2013	2012/08	Lack of care in producing two different versions of company accounts; failure to clarify basis on which fees would be charged	Censure
2013	2012/43	Lack of care in failing to submit Companies House return and confirm its submission; lying to client re submission and blaming Cos House staff; abruptly terminating engagement; and providing IPS	Suspension for 2 years & censure
2014	2013/04	Negligence in carrying out work for client, including failure to file tax return and responding to his correspondence; IPS; and failure to cooperate with TDB	Expulsion & compensation (£1,400)
2014	2013/10	Failure to respond to correspondence and supply information repeatedly requested by a successor adviser, and failure to cooperate with TDB	Censure & fine (£500)
2014	2014/07	Failure to return client's telephone calls and to supply information requested by successor adviser; failure to file Corporation Tax returns in time	Warnings

* The level of the fine reflected the member's failure to pay a fine ordered at a previous disciplinary hearing

4 Inadequate Professional Service

2013	2011/26	Failure to seek necessary information from client and to submit his tax return on time	Compensation £2,226
2014	2013/27	Negligence in preparing client accounts	Censure
2015	2014/15	Failure to exercise due care when advising on the likelihood of retrospective legislation being introduced to combat a tax scheme; Failure to adequately inform about commission payments.	
2016	2014/73	Failure to file annual return for client / Failure to reply to correspondence from client / Failure to respond to correspondence from TDB	Censure Compensation
2016	2015/09	Failure to file annual return for client	Warning
2016	2015/24	Failure to reply to client correspondence; Failure to respond to correspondence from TDB; 2 previous disciplinary findings.	Expulsion
2019	2018/30 2018/32 2018/37 2019/18	Failure to provide services for which a number of clients had paid	Expulsion
2020	2018/17	Failure to properly advise in relation to a tax avoidance scheme	Censure, £5,000 fine, £5,000 compensation

2020	2018/18	Failure to properly advise in relation to a tax avoidance scheme; Failing to advise of receipt of commission.	Censure
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5 Client monies

2011	2011/16	Failure to keep client monies in separate account; and failure to report censure by another disciplinary body.	
2016	2014/71	Withdrawal of monies from client account without authority	Censure
2018	2016/15	Failure to properly account for monies held on behalf of client and failure to repay monies; Filing to take care in conduct and in professional dealings: Failure to respond to correspondence from TDB without delay	Expulsion

6 Ethical conduct

2010	2008/21	Dishonestly taking money to purchase non-existent shares; failure to cooperate with TDB	Expulsion & fine (£23,000)
2012	2011/15	Improperly accessing emails of former employer using confidential information	Censure
2013	2011/14	Poaching clients in breach of a share sale agreement	Censure
2013	2011/23} 2012/14}	Dishonest use of trust funds; dishonest withdrawal of other funds; dishonest submission of applications to a bank; deception by reliance on a forged document; failure to separate business accounts from client funds	Expulsion
2016	2014/72	Carrying out work for clients of employer contrary to instructions / carrying out work for non-clients of employer contrary to instructions and/or contract of employment / No PII / unauthorised use of employer's facilities / Breach of confidentiality	Exclusion Compensation
2017	2016/12	Solicitation of employer's clients; using employer's resources for personal gain; failure to hold PII; no professional clearance; failure to inform CIOT/TDB of dismissal	Censure
2019	2019/08	Breaching employer and client confidentiality	Expulsion
2020	2019/16	Dishonest claims for tax reliefs (EIS, VAT) from HMRC	Expulsion £20,000 fine

7 Other failures to comply

2010	2008/25	Failure to comply with court order, to respond to ATT or to cooperate with TDB	Expulsion
2013	2012/37	Failure to make any response to ATT or TDB re AML renewal	Censure & fine (£115)
2013	2012/38	Failure to make any response to CIOT or TDB re AML renewal	Censure & fine (£1,000)

8 Personal conduct / Conduct unbecoming

2011	2011/07	Viewing inappropriate material and conducting an improper relationship online in working time; after dismissal, attempting to poach clients	Censure
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9 Student issues / Integrity Charge

2015	2014/74	Contrary to CTA examination instructions legislation books with numerous annotations were on the person's desk during the Advisory examination on 2 days.	Suspension for 2 years
2018	2018/02	Possessing and using unauthorised material in exam (no dishonesty found)	Censure
2019	2018/24	Possessing and using unauthorised material in exam (no dishonesty found)	Censure
2019	2018/12	False representation to employer as to exam results; forged document	Expulsion
2020	2019/23	Possessing unauthorised material in exam (no dishonesty)	Warning

10 Failure to Comply with AML Regulations

2014	2014/23	Failure to file Annual Return; failure to respond to correspondence with TDB	Expulsion
2015	2015/06	Failure to comply with AML Regs / Failure to advise the CIOT of Supervisory Authority under the AML Regs 2007. I.e. not registering with the AML scheme / Failure to respond to correspondence from CIOT and TDB	Censure
2016	AML/5	Failure to comply with AML Regs / Failure to uphold professional standards / Failure to act with due courtesy/ Failure to provide information and respond to correspondence from ATT and TDB	Censure £250 fine
2016	AML/5	Failure to comply with AML Regulations; holding out as CIOT member; professional behaviour; failed to reply to ATT & TDB correspondence	Expulsion

APPEAL TRIBUNAL

2009	2008/08	Failure to report expulsion from another professional body for behaviour which showed a lack of integrity	Expulsion
2010	2008/04	Appeal against costs awarded against a firm found to have failed to serve a client with adequate competence or skill	Costs reduced
2012	2009/29 & 2010/21	Appeal against sanction for failure to ensure clients aware of fee basis and fees were fair in relation to services provided; improper exercise of liens; failure to take due care towards clients; failure to supply information requested by TDB	Suspension for 18 months