

**TAXATION
DISCIPLINARY
BOARD**

**INDICATIVE SANCTIONS
GUIDANCE**

December 2020 (revised January 2022)

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SECTION 1: INTRODUCTION

This Indicative Sanctions Guidance ('the Guidance') was updated, extended and issued in December 2020 by the Taxation Disciplinary Board (the 'TDB') after two rounds of public consultations¹ during 2020. We have undertaken an interim review of the Guidance in 2021 in the light of experience in its use and feedback from our stakeholders. Our conclusion is that the Guidance is working well though we have taken the opportunity to make some revisions, particularly in the area of criminal convictions unrelated to professional work. We plan to undertake a full review in 2022 which will include formal consultation.

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 should be noted that the Tribunal only hears cases that have been referred to it by an Investigation Committee who have identified a prima facie case.

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 member². 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.

At the same time, this Guidance is not to be regarded as a straitjacket. Each case will be judged on its own facts. Members of the Tribunal must exercise their 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 D.

This Guidance is a 'living document' which will be reviewed annually by the TDB and updated and revised when the need arises. 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
30 Monck Street, London SW1P 2AP

January 2022

¹ An initial consultation was issued in January 2020 and a full consultation issued in July 2020.

² 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 The TDB, bearing in mind the wider public interest, applies the following key principles in disciplining members of its sponsoring bodies:

- 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. This does not mean that it will always seek to minimise its costs as it must be free to involve expert assistance, especially in complex cases where a defendant is represented by counsel.

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 seriously the Tribunal judges the misconduct. 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 most recently reissued PRPG in 2018. Since 2011 PRPG has included 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

Cases that come before the TDB will usually include an alleged breach of one or more of these principles.

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 (as set out in 2.5 above) and the five standards for tax planning:

- Client specific
- Lawful
- Disclosure & transparency
- Tax planning arrangements
- Professional judgment and appropriate documentation

2.7 PCRT is supported by supplementary help sheets³:

- [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.

³ The Help sheets listed are those available at 1 December 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> .

- 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.

Interim orders

2.11 When the TDB receives a complaint, it is normally considered first by an Investigation Committee ('IC'). If the IC finds (in essence) that there is a case to answer, then the complaint is referred to a Disciplinary Tribunal ('DT') to hear the case formally.

2.12 However, the IC also has power to refer the complaint to an Interim Orders Panel ('IOP'). The IOP will be convened more quickly than a DT and may conduct its hearing by telephone rather than in person or via video conferencing. There are conditions to be observed around its jurisdiction, including:

- the circumstances of the complaint
- the need to protect the public
- the need to protect the reputation of the member's professional body
- any unfairness to the defendant, including difficulties over presenting submissions

2.13 If the IOP considers that the continuing membership of the defendant of the professional body poses a real risk to either or both of the public or the professional body, then the IOP has power to suspend the member from membership or impose conditions on their continued membership.

2.14 The IOP must publicise any interim order it makes (the guidelines in Annex B will be followed). If it declines to make an interim order it has power to award costs against the TDB.

2.15 This section is a brief summary of the IOP procedure which to date has been little used. Reference should be made to The Taxation Disciplinary Scheme Regulations 2014 (updated 2016), Part five, regulations 9-11 for full details.

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'⁴ 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

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).

⁴ 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 due to administrative oversight or problems;
- (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 and 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 Chair or by some other designated person before it is sent.

(5) Censure⁵

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 no⁶ 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 public record if they consider that the standard period of three years is inappropriate.

⁵ The TDB sanction is Censure; we note that in some other disciplinary schemes, the term 'Reprimand' is used.

⁶ 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, 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.

In considering the level of the fine, the Tribunal should reflect on the purpose of the fine: for example, is this a deterrent or to ensure that the member does not profit 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, now included in this document at Annex A.

(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:

- a) there is no risk of a recurrence of the misconduct; and
- b) 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 TDB views dishonesty as a very serious matter, given the reliance placed on members' advice and actions by their clients and the tax authorities. In most cases of proven dishonesty, a sanction of expulsion will be appropriate.⁷

If the Tribunal decides on a sanction of expulsion, it should consider the period that should elapse before a reapplication for membership is likely to be successful. It may therefore include in its judgement a statement along the lines of: 'An application for readmission is unlikely to be successful until a period of [x] years has elapsed from the date of this decision, save for exceptional circumstances, for example persuasive evidence of rehabilitation.'

(9) Imposition of conditions on the member

Under the Regulations, the Tribunal has the 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 complainant⁸ 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. Compensation is intended to reflect an 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. It is accepted that the £5,000 maximum amount will usually not cover the full loss suffered by the complainant.

(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 CIOT and ATT, the Tribunal can only recommend removal; it cannot order the member's removal.

⁷ The issue of dishonesty is discussed further in Section 4.

⁸ 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.

(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*⁹ 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 costs order is imposed.

(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.

Reapplications after expulsion

3.4 If a former member who has previously been expelled from membership as a result of a decision by the DT reapplies for membership, their reapplication may need to be considered by the TDB. The reapplication will no doubt be directed to the CIOT/ATT, but the

⁹ R v Northallerton Magistrates Court ex parte Dove (1999) 163 JP 894

body will normally ask the TDB for input. The purpose of any TDB consideration is not to judge the reapplication, as that will be for the CIOT/ATT to conclude on, but rather to add any TDB points into the process. It may be that the readmission application is straightforward from the TDB's point of view and the Reviewer may be able to conclude quickly and advise the CIOT/ATT accordingly.

3.5 However, in a more involved situation, the TDB may ask a DT to examine the reapplication and weigh it and the circumstances of the former member against the earlier findings of the DT and any comments contained therein, in particular the expiry of any minimum period before a reapplication was noted as likely to have a chance of success. The Tribunal's decision would normally be framed in terms of whether it does or does not see any barriers from the TDB's position in the CIOT/ATT's consideration. The Tribunal should also consider the issue of how the record of the original expulsion should be treated on the TDB website (see Annex B). The decision of the DT on a readmission case would normally be publicised but anonymised, but this is again subject to the DT's decision.

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.¹⁰

(1) CRIMINAL CONVICTIONS (including findings of dishonesty by other disciplinary bodies) related to professional work

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

Any other criminal 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 criminal 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

¹⁰ See in particular *Donkin v The Law Society* [2007] EWHC 414 (Admin).

Comments

The TDB views dishonesty as a very serious matter, given the reliance placed on members' advice and actions by their clients and the tax authorities. In most cases of proven dishonesty, a sanction of expulsion will be appropriate.

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 conviction¹¹ but arose in a member's private life, as opposed to their 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 their profession.

There have been a number of cases of relevance to the question of whether a conviction in an individual's private life should be considered relevant to their professional work and standing. These include:

- R (on the application of Pitt & Tyas) v General Pharmaceutical Council – the fact that the GPhC's regulations required members to be 'professional' at all times, including being polite and considerate, had to be considered with common sense and 'rooted in real life'.

¹¹ Section 14(1) Powers of Criminal Courts (Sentencing) Act 2000 provides that, where the order on conviction for an offence is an absolute or conditional discharge, that shall not be deemed to be a conviction for any purpose other than the purposes of the proceedings in which the order is made or commission of a further offence during the period of the conditional discharge and see Wray v General Osteopathic Council [2021] EWCA Civ 1940 for the application of Section 14(1) in regulatory proceedings.

- Roylance (a medical director) v General Medical Council – the conduct was not medical work but was linked with the profession of medicine, so it was relevant.
- Martin v Royal College of Veterinary Surgeons – M was a farmer and as such his treatment of farm animals was relevant to his professional qualification.
- Kirk v RCVS – a criminal conviction for violence at the weekend (and so away from work) was relevant.
- RCVS v Samuel – an altercation with a neighbour had little bearing on his fitness to practise as a vet.

Consideration needs to be given to whether the conduct crossed the line of damaging the standing of the member as a provider of tax services or harmed the profession. A member owes a duty not to act in a way that would bring the CIOT/ATT into disrepute or in a way that would harm the reputation of the CIOT/ATT. Factors that may be relevant include:

- The proximity of the action to the professional work
- The seriousness of the matter
- Vulnerability: a possible abuse of position

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. For example, if the offence related to 'drink driving' factors such as the reason for drinking, the circumstances of the driving (was there a link to work?), the degree of intoxication and whether recklessness was proven could all be relevant.
- Whether the offence and conviction affect the member's professional work or their 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).

Given the range of situations, it is not possible to give simple guidance on the likely sanction(s). The Tribunal should have regard to the full range of sanctions that are available, from No Further Action to Expulsion.

(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 or promised to a client
- Defective tax work (e.g., poor quality, late filing, 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 client¹²
- 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

¹² This does not mean the TDB will intervene in fee disputes; rather that the DT may consider the fairness of fees in weighing up a decision and its findings.

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)
- Illness preventing proper attention to work scheduled

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 which 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 a wide range of actions but naturally excludes those which have led to a criminal conviction, save where the conviction has resulted in an absolute or conditional discharge where the conviction cannot be relied upon but the conduct underlying the conviction can be alleged to have been unethical:

- Deceiving/ misleading TDB, or the member's professional body, or HMRC, 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
- Failure to carry out work paid for by a client
- Dismissal by an employer for misconduct/gross misconduct
- Disqualification as a director/trustee, or entering into a disqualification undertaking

- Receipt of a dishonest tax agent conduct notice
- Promotion of tax avoidance arrangements (see additional guidance below)

As has already been stated, the TDB views dishonesty as a very serious matter, given the reliance placed on members' advice and actions by their clients and the tax authorities. In most cases of proven dishonesty, a sanction of expulsion will be appropriate.

Failing to act with integrity is not the same as dishonesty but again this is something that the TDB view as a serious matter given the principles laid down in PCRT and PRPG. For serious failings, a sanction of expulsion will be appropriate.

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
- Director/trustee disqualification being for a short period (which may warrant suspension rather than expulsion)
- Successful challenge to a dishonest tax agent conduct notice

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

Additional guidance on Promotion of tax avoidance arrangements

It should be noted that PCRT's 'Standards for Tax Planning' includes 'Advising on tax planning arrangements' and states:

'Members must not create, encourage or promote tax planning arrangements or structures that: i) set out to achieve results that are contrary to the clear intention of

Parliament in enacting relevant legislation; and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.'

A member who breaches this PCRT standard may have a case brought against them by the TDB where there may be a further range of aggravating and mitigating factors.

Aggravating factors

- Failure to describe the arrangements fully and openly to the client
- Failure to report the arrangement fully and openly to HMRC
- Repeated losses before the Court of arrangements promoted by the member
- Poor research of the efficacy of the arrangements
- Active bulk marketing of an arrangement that also had some of the above features
- Promotion of a scheme to an unsophisticated client who could not be expected to understand it properly
- Pursuing the consequent tax case beyond the Tribunal to the Courts despite there being no realistic, or only very slight possibility of success, thus adding to the expense of the client unnecessarily and delaying resolution of the case.

Mitigating factors

- The member made every effort to describe and report the arrangement properly and openly
- It was reasonable for the member to believe that the arrangement was effective

In cases where HMRC have issued a monitoring notice under the Promoters of Tax Avoidance Schemes (POTAS) legislation, this should be taken into account by the Tribunal but will not be regarded as definitive.

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 being taken against them
- Failure to inform ATT or CIOT of disciplinary and/or regulatory action upheld against them by another professional or regulatory body
- Failure to comply with CPD requirements
- Failure to provide professional clearance or transfer information in accordance with the provisions of PRPG

- Breach of AML regulations (not involving criminal activity or dishonesty)
- (From 1 January 2021) Failure to report acceptance of a caution for a criminal offence
- (From 1 January 2021) Failure to report committing a summary only road traffic offence¹³

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. Misuse of social media is likely to be considered under this heading.

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
- Extreme language used in social media

¹³ 'Summary only' road traffic offences comprise: careless driving (driving without due care and attention); driving whilst disqualified; excess alcohol; failure to stop or report an accident; failure to provide a specimen for analysis; no insurance; speeding; and unfit through drink or drugs. Speeding does not have to be reported if the member goes on a driving awareness course or accepts a fixed penalty for speeding.

- Lack of apology or prompt action to remedy

Mitigating factors

- No loss suffered
- Accidental
- Action taken at request of client or employer
- Momentary lapse, promptly remedied (in relation to social media)

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 cheat¹⁴
- 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).

¹⁴ This includes the use of electronic devices to access such materials.

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'¹⁵ 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 are breaches of the participants' administrative requirements, rules, or procedures, they 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 their 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,

¹⁵ 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 CPD due to administrative oversight or problems;
- (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.

3.4 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. Particular care will need to be taken over AML failings: it must be clear that the failing was of a minor, administrative nature and that it has been remedied.

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 (and would probably not be referred to the TDB by CIOT/ATT).

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.

4.5 The TDB has reviewed the size of its fixed penalties and concluded that their level remains appropriate. However, we will be carrying out research with other comparable bodies during 2022 to ensure that they are set at appropriate levels in all cases. As part of this review, we will be reflecting on whether there need to be different levels of fixed penalty when the failing is committed by a firm of a significant size compared with an individual practitioner.

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 bodies¹⁶ 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 facie¹⁷ 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

¹⁶ The participant bodies are the TDB's two sponsors, the CIOT and ATT

¹⁷ 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.

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.

7.2 In the case of suspension, the record on the Board's website will be maintained for the period of suspension or three years, whichever is longer. If the member resumes membership whilst the record is still on the Board's website, it will be annotated to show that the member has resumed membership following their period of suspension.

7.3 In the case of a member being expelled, then in principle the record will remain on the Board's website indefinitely. Should the member reapply for membership and succeeds in being readmitted, then the record of the original decision will normally be maintained for a further three years following the date of readmission and then be deleted. However, any DT considering the case for readmission should address the question of the appropriate period for which the decision should remain on the website and include in any conclusions its view

on the further period of publicity. The decision of a DT considering a case for readmission would normally be published on an anonymous basis.

7.4 The TDB will keep its own records of decisions made permanently. It will be open to the TDB to respond to an interested party (for example a prospective client of a member) by confirming or denying that the member has had a case found against them in the past and (if relevant) the sanction imposed. The TDB will exercise care in disclosing such information and whilst there is a presumption that a past expulsion will always be disclosed, consideration will be given to the interests of all parties before making any disclosure. It will be open to the TDB to convene an Investigation Committee and/or Disciplinary Tribunal to consider such a request.

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 2014 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.

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; also, 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. In particular, whilst the TDB will not automatically hire counsel to present its cases, it will normally do so in a complex case where a defendant has decided to be represented by counsel.

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 included at 8 below, together with explanatory notes at 9.)
- 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 they should not be liable to pay costs or any part of them, although they 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 Tribunal case.

- 5.6 If a member challenges a costs order on the grounds that they lack the means to pay the sums required, the Tribunal **must require evidence**. For this reason, if they are 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 they are 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.¹⁸

¹⁸ 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” 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. Their 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, they 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.

TDB INDICATIVE SANCTIONS GUIDANCE - PREVIOUS DECISIONS

This Annex gives a brief summary of most decisions by the TDB 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		Expulsion

		Illegal sexual activity; criminal convictions; 11 years imprisonment	
2020	2019/21	Theft from employer; conviction for fraud & abuse of position; suspended prison sentence; failing to notify TDB	Exclusion from student register
2021	2020/35	Fraud and forgery relating to charity funds; conviction & suspended prison sentence	Expulsion

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
2021	2018/22	Failure to respond to ATT & TDB correspondence relation to DBS (Criminal History Check) +	Suspension until rectified
2021	2019/32	Failure to take proper care in professional work; bringing himself and professional body into disrepute	Censure

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

+ This case also links to section 10 on AML

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

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
2021	2020/09	Breaches of PRPG including failure to ensure client monies properly dealt with and failure to act in an honest manner with professional work.	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
2021	2018/31	Dishonest claims for two R&D tax credit reliefs	Expulsion

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)
2021	2020/26	Failure to provide CPD records despite repeated reminders	Censure

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
2021	2020/28 -2020/33	Collaboration in exams and use of text in exams	Suspension from student register for 2 years; prohibited from sitting exams for between 2 & 4 years depending on facts
2021	2021/08	Collusion in sitting exams	Suspension from student register for 2 years; prohibited from sitting exams for 2 years
2021	2021/08	Dishonest collusion in sitting exams	Removal from register

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

INTERIM ORDERS PANEL

2021		Expelled by another professional body for 3 years for breach of ethics code	Suspension until disciplinary hearing
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