

TAXATION DISCIPLINARY BOARD

DISCIPLINARY TRIBUNAL GUIDANCE NOTES

Introduction

1. You are receiving this guidance because Charges against you have been referred to the Disciplinary Tribunal (“DT”). No finding has been made against you in respect of any of the Charges which will now to be considered by the DT.
2. The DT is entirely independent of the Chartered Institute of Taxation (“CIOT”) and the Association of Tax Technicians (“ATT”). It will not include any panel member who was a member of the IC panel which referred the case to the DT. It will not know the reasons why the IC has referred the case for a hearing.
3. You received with this Guidance a copy of the Taxation Disciplinary Scheme which governs the work of the DT and copies of the relevant Regulations made under it. That Scheme and those Regulations are the definitive documents and they prevail over anything contained in this Guidance.
4. This Guidance is provided to you to explain how the DT carries out its work, and to help you to respond to the Charges and to explain the hearing process. More detailed information is available in the Taxation Disciplinary Scheme Regulations and the TDB’s Indicative Sanctions Guidance, both of which are also available on the TDB’s website www.tax-board.org.uk.

Structure Of The Disciplinary Tribunal

5. The DT panel is composed of three members. The Chair is a qualified lawyer, one panel member is a member of CIOT or ATT, and the third is a lay person who is not a member of either body. It is assisted by a clerk who will be your point of contact, but who takes no part in any decision making.
6. The case against you will be presented by a person nominated by the TDB, usually a barrister, who is referred to as the “Presenter”. That person will be responsible for the presentation of the case.
7. In the hearing room there will be the three members of the DT, the Clerk, and the Presenter. As all hearings are open to the public there may be others present but this is extremely rare. There may occasionally be others present as observers such as members of TDB, CIOT or ATT staff or prospective panel members in training. Any

complainant is permitted to attend as an observer. No observer shall be permitted to take any part in the proceedings. You can apply to the Chair to have the hearing held in private, but it is up to the Chair to decide whether any such application should be granted.

The Policy Of The Disciplinary Tribunal

8. The policy of the DT is to be fair. That means being fair to you and also to the public interest, which requires the maintenance of high standards by those professionally involved in taxation.
9. This means that you are entitled to expect from us:
 - Impartiality and independence.
 - Courtesy and consideration.
 - The final determination of your case as quickly as circumstances and resources allow.
 - Recognition (so far as our impartiality allows) of the stress to which you will inevitably be subject.
 - Proportionality in the event that any sanction has to be imposed upon you.
10. We in turn are entitled to expect from you:
 - Co-operation with us and (so far as necessary) with the Presenter in ensuring the proper preparation and presentation of the case by both sides.
 - Prompt compliance with any time limits and any interim directions we may make.
 - Courtesy and consideration in dealings with us and the Presenter.
 - Proper preparation and presentation of your case so that the important issues can be readily identified, and time is not wasted.
11. We regard time limits as important, and usually indicate the consequences of failure to comply with them. If you consider that any time limit is likely to be too short, you should notify us (through the Clerk) at an early stage and not wait until the limit is about to expire or has already done so. We will then consider whether an extension can be granted and may invite you (and the Presenter) to attend a preliminary hearing for that purpose.

Before The Hearing

12. At least **35 days** before the date set for your hearing (unless a shorter period is agreed with you) you will receive the following either together or at different times:
 - i. A copy of the charges against you that the DT will be considering.
 - ii. A copy of the Taxation Disciplinary Scheme
 - iii. A copy of the Taxation Disciplinary Scheme Regulations
 - iv. A copy of the TDB's Indicative Sanctions Guidance
 - v. A copy of the papers that were before the Investigation Committee that considered your case

- vi. A copy of the Investigation Committee's written decision and reasons
- vii. A bundle of the documents that will be before the DT at your hearing upon which the TDB relies.
- viii. A Response Form

You are requested to notify the Clerk by email that you have received the Charges and the other papers that accompany them. Please also confirm your contact email address and telephone number or advise of any different contact details that should be used.

13. You should consider whether you need legal advice in providing your response to the allegations and in preparing and/or presenting your case. If you cannot afford to pay privately for the services of a professional adviser, a Citizens' Advice Bureau may be able to help you or put you in touch with someone who can. If you do engage a legal or other adviser, then (unless you ask for no oral hearing) make sure that his/her name and contact details are given on the Response Form and indicate whether you wish further communications from the Clerk or the Presenter to be sent to that adviser rather than you. If you engage a professional adviser after you have returned the Response Form, you should immediately so inform the Clerk and indicate whether you wish further communications to be sent to him or her.
14. This means that you should start thinking about your response as soon as you receive the papers. Always refer to these guidance notes when completing the Response Form. If you fail to return the Response Form within the specified time (or any extended time you may apply for which has been granted) then the DT will proceed on the basis that you contest all the allegations.
15. In preparation for the hearing, each party prepares a Bundle. The purpose is to ensure that each of the parties and each member of the DT can readily identify each document to which reference is being made at every point in the Hearing. Sometimes it may be possible for the parties to agree to the production of a single Bundle and the DT strongly encourages that practice. In the ordinary case, your Bundle should contain:
 - An index at the beginning;
 - Copies of your Witness Statement and of Statements of all other Witnesses you are calling;
 - Copies of all documents referred to in each of the Statements;
 - Copies of any other documents on which you rely.

Completing The Response Form

16. You are required to complete and return the Response Form to the Clerk by email by the date specified on the Response Form. Please complete all sections as best you can. The following will assist in completion of the various Sections of the Response Form:
17. Section 1

- a) This section sets out the Charges that the DT will be considering, and if there is more than one, you should consider each one separately. If you decide to contest any allegation, you will have to say whether that is simply because you claim it is untrue, or whether you consider that it is literally true, but that there are circumstances which prevent it from being a disciplinary offence. In the former case, it will be enough to say that it is literally untrue when giving the reason for your denial. In the latter case, you should set out the relevant circumstances briefly, but with sufficient detail to enable the DT and the Presenter to understand them.
- b) If you decide to admit all the Charges, and the Presenter considers that any explanation or mitigation you have provided in writing doesn't amount to a defence or is in any way equivocal, a simplified procedure can be applied. This involves the Presenter outlining the case against you to the Tribunal. If you or a representative are present, you can then address the DT. The DT will then proceed to consider the appropriate sanction taking into account any oral or written representations you have made to it.
- c) If you decide to admit any allegation, bear in mind that a sanction is likely to be imposed on you in respect of it. If you attend the hearing, you will have the opportunity to make representations to the effect that there should be no sanction or as to its severity. If you do not attend the hearing, any representations you might wish to make about the possible sanction can be made in writing and should be provided to the Clerk not later than three days before the hearing. **You are advised to consult the Indicative Sanctions Guidance for information about the sanctions available to the DT and the guidelines that apply to each sanction.**
- d) If you admit some, but not all, of the allegations, then the DT will normally wait until the contested allegations have been considered before determining any sanction in respect of those admitted.
- e) If you admit all the allegations, your written representations should concentrate on any mitigating circumstances and on the sanction the DT should impose.

18. Section 2

- a) You will have to say in the Response Form whether or not you require an oral hearing, and if you do, whether you will be represented. You should provide the details of your representative. If you have not selected a representative at the time of completing the Response Form but do so subsequently, you should advise the Clerk as soon as possible of the details of your representative. If you do not attend, you can be represented in your absence.
- b) If you admit all the allegations, or if the ones you contest can, in your opinion, be adequately answered in writing, then you may elect not to have an oral hearing. In that case, you should send in your written representations with the Response Form or at the latest not less than 21 days before the scheduled hearing date. You should include in your representations any submissions you would like to make in relation to

the Charges and also in relation to the possible sanction, costs and publicity (for which see below).

- c) If you do not wish to attend, or fail to attend, the DT will consider whether it should proceed to consider your case in your absence. If it does so, it will take into consideration any written representations or other information you have provided.
- d) If you are unable to attend the hearing on the scheduled date but still wish to have an oral hearing, you should notify the Clerk as soon as possible. The DT's chair has an absolute discretion to grant an adjournment. You will need to provide evidence supporting your grounds for an adjournment.
- e) If you request that there should be no oral hearing, but fail to send in your written representations within the specified period or any extended period you apply for and are granted, the consequences will be the same as if you had not sent in the Response Form at all - the DT will proceed on the basis that you contest all the allegations.

19. Section 3

- a) In the absence of a reasonable explanation, the DT may draw adverse inferences from any failure by you to provide it with evidence in person or through your representative (*R v Kuzmin*) v *General Medical Council* [2019] EWHC 2129 (Admin).
- b) If you deny some or all of the allegations against you and/or dispute material facts, the DT when reaching its decision may take into account your full or partial silence. It may infer that you have not submitted a defence or mitigation on the basis that the allegations, in full or in part, are true. This may have a detrimental impact on your defence and, potentially, your continued membership.
- c) If you do not give oral evidence, the DT may draw adverse inferences even if you supply a written and signed statement. This is because the DT will not have the opportunity to explore your evidence with you, either by means of cross-examination by the case presenter or by direct questioning from the Disciplinary Tribunal.
- d) You may call witnesses to provide evidence to support your case. You are required to notify the Clerk of any witnesses you intend to call at the hearing. Their evidence must be contained within a written Witness Statement that must be provided to the Clerk no later than 14 days before the scheduled hearing date.
- e) It will not normally be appropriate to call Expert Witnesses. However, occasionally, an Expert Witness may be appropriate; for example, if the case against you concerns a technical tax avoidance scheme, it could be useful to have a Statement from a specialist (possibly Tax Counsel) that the scheme was technically sound; and, if you claim that you suffer (or suffered) from a medical condition, a Statement from your Doctor would obviously be useful. You will be responsible for the costs and expenses of any Expert Witness that you instruct.

- f) The same adverse inference may be drawn if a witness does not turn up to be questioned, unless the Presenter has stated that they do not wish to conduct any cross examination of that witness in which case the witness's statement will stand as unchallenged evidence of what is said in it.
- g) Without a challenge, the DT will assume the authenticity of any document or copy document relied upon by either party. Any challenge to the authenticity of a document must be raised as early as possible. If a challenge is made, it is for the party asserting that a document is authentic to prove that it is.

20. Section 4

- a) All hearings are open to the public. The DT's deliberations are conducted in private. In practice, it is very rare for a member of the public to attend a hearing. You can indicate in the Response Form if you wish to request a hearing at which the public are excluded. You will need to provide your reasons.
- b) If you need any form of assistance in the conduct of the hearing, please indicate this in the Response Form so that any necessary arrangements can be accommodated.

The Hearing

- 21. Most cases are now conducted virtually via Microsoft Teams. On rare occasions, and if requested by a member, a face-to-face hearing might be convened, usually at the CIOT/ATT offices in central London, but generally such hearings will be used only if the case involves a number of participants such as legal representatives or witnesses.
- 22. All hearings are recorded either electronically or by a shorthand writer or logger. This is to enable a transcript to be provided should one be requested. There would be a fee associated with the provision of a transcript.
- 23. The hearing procedure is reasonably informal, with everyone seated at a table. The Chair of the DT will introduce her/himself and the two other members of the DT and will then invite everyone present to identify her/himself.
- 24. The Chair will then ask that the Charges be read out (although this is not always necessary if the parties agree). You will be asked to say whether in respect of each Charge whether you accept or contest the Charge.
- 25. The Chair will then usually call upon the Presenter to open the case. S/he may make a short opening statement and possibly invite the Panel to read any Witness Statements from any witnesses who are not present because you had indicated that you did not wish to cross-examine them. Then the Presenter will call any Witnesses who are present.
- 26. When the Presenter has finished questioning his/her witnesses you may cross examine the witness if you wish to do so. The Presenter may ask a few supplementary questions when you have finished your cross-examination.

27. You will then be invited to introduce your case. You will be asked if you wish to make a statement or to give evidence. If you elect to make a statement you can't be cross examined on it by the Presenter, although the DT may wish to ask you some clarificatory questions. If you choose to give evidence, (which you are not required to do under oath, although your evidence must be truthful), you can be cross examined by the Presenter. Your task is simply to listen carefully to the questions and to answer them truthfully.
28. If you are calling witnesses of your own, you now proceed to call them in the order you choose. You should ask them to confirm the correctness of their witness statement and then ask them any further questions you wish, after which the Presenter can cross examine them, and the DT may wish to ask them questions. You will have a chance to re-examine your witness.
29. When all your Witnesses have given their evidence, the Presenter will then be asked to make her/his closing submissions. You will then be asked to do the same. This is where you can summarize your case and highlight why you don't consider that the Charges have been made out, or, if you accept any of the Charges, what mitigation you would wish to draw to the DT's attention.
30. After closing submissions, the DT will then retire to consider whether it finds any of the Charges has been proved. The burden of proof is on the TDB, and the standard of proof is the civil standard – the balance of probabilities. When it has made its decision on the Charges, the DT will return and announce its findings on the Charges.
31. If none of the Charges has been found proved, ie the DT has decided the whole case in your favour, nothing else will remain to be done, unless you wish to apply for costs, but costs may be awarded against the TDB only if the DT considers that the Charge against you was brought maliciously or without justification.
32. If the DT finds any of the Charges proved either on your admission or as a finding on the evidence before it, it will then go on to consider the appropriate sanction.

Sanctions

33. If the DT finds any of the Charges against you proved, the Presenter will be asked for any information about any past disciplinary or criminal matters about which the TDB is aware. This information will include any previous cases where a *prima facie* case was found against you, even if these did not lead to further disciplinary action.
34. The available sanctions and the guidelines that the DT will take into consideration when arriving at the appropriate sanction are set out in detail in the **Indicative Sanctions Guidance**, a copy of which you will have received and which is also available on the TDB's website www.tax-board.org.uk.

35. The Presenter will not specify a particular sanction that the TDB considers is appropriate but will draw to the DT's attention what he/she considers to be the applicable sections in the Indicative Sanctions Guidance and may make submissions as to aggravating and mitigating factors that are present.
36. You will be invited to make submissions about the appropriate sanction, giving reasons why a less serious view should be taken than might otherwise be the case. The purpose is not to argue with the decision but, on the basis that the decision is right, to state any mitigating circumstances.
37. When you have finished, the DT panel will deliberate as to the appropriate sanction, and the Chair will then announce what sanction is to be imposed in your case.

Costs

38. Once the sanction has been announced, the Presenter will ask the DT to make an order that you pay the TDB's costs. The costs order will include all costs associated with the investigation of the complaint(s) against you and the disciplinary process. You will be provided before the hearing with a draft costs schedule which will be an estimate of what the costs are likely to be. The actual costs which will be requested may be higher than this. The costs are likely to be much higher if there is an oral contested hearing. If there are disputed issues of fact, an oral hearing is likely to be essential so that you and any witnesses can be questioned. This can add to the duration of the hearing.
39. You are free to inform the DT, as part of your mitigation, that you do not have the means to pay the TDB's costs or any other financial penalty, but if you do so you must provide documentary evidence of your financial circumstances, to include income, capital, assets and expenditure in sufficient detail to enable the matter to be properly considered. The DT might consider an application to make payments by instalments.
40. For more information about how the TDB's costs are determined, please see **Annex C** to the Indicative Sanctions Guidance.

Publicity

41. All forthcoming DT hearings will be announced on the TDB's website.
42. If the DT finds any Charges against you proved and imposes a sanction, it will generally order the publication of its order and its written reasons for making that order. Publication will be on the TDB's website and in "Tax Adviser" and will take place after the expiry of the 21-day period during which an appeal may be made against the Tribunal's order provided no appeal has been submitted.
43. Publication will normally be made without redaction of your name. You can request that your name be redacted from any publicity but you will need to provide grounds for any such application. Any personal information or information identifying third parties who are not parties to the complaint will generally be redacted or anonymised.

44. For more information about publicity orders, please see **Annex B** to the Indicative Sanctions Guidance.

After the hearing

45. Although the Chair will announce the panel's decision and any orders at the conclusion of the hearing, the written decision and reasons will follow the hearing. The Clerk will send you the DT's written decision and reasons as soon as it has been received from the Chair, usually within 10-days of the hearing date. The date upon which you receive the written decision and reasons is the effective date of the decision and the date upon which it takes effect. This date is the date from which you have 21 days within which to submit an appeal.
46. If you have been ordered to pay a fine and/or the TDB's costs, you will be sent an invoice for the relevant sum. You will usually have 28 days within which to make payment.
47. You should contact the Clerk as soon as possible should you wish to consider making an appeal. Unless you lodge an appeal, the DT's decision will be published after 21 days from the effective date of the DT's decision.

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