

**TAXATION
DISCIPLINARY
BOARD**

**INDICATIVE SANCTIONS
GUIDANCE**

Revised October 2024

CONTENTS	Page
Section 1: Introduction	3
Section 2: Principles and procedures	4
Ethical principles	4
Proportionality	5
Rehabilitation of offenders	6
Interim Orders	6
Appeals	7
Section 3: Description of the sanctions available	8
Section 4: Categories of complaints	14
(1) Criminal convictions (including findings of dishonesty by other professional bodies)	15
(2) Criminal convictions unrelated to professional work	17
(3) Lack of professional competence	19
(4) Failure to take due care	20
(5) Inadequate professional service	21
(6) Failures in dealing with client monies	22
(7) Unethical conduct	23
(8) Other breaches of byelaws or regulations	25
(9) Inappropriate personal conduct	26
(10) Student issues	27
(11) AML Related Breaches	28
Annex A: Publication of Disciplinary and Appeal decisions	29
Annex B: Guidance on awarding costs	34

SECTION 1: INTRODUCTION

1.1 This Indicative Sanctions Guidance ('the Guidance') was issued in December 2020 by the Taxation Disciplinary Board (the 'TDB') after two rounds of public consultations¹ during 2020. We are committed to an annual review of the Guidance in the light of experience in its use, feedback from our stakeholders, developments on case law and changes in the wider regulatory environment. The guidance was revised in January 2022 and again in May 2023. In 2024 the Taxation Disciplinary Scheme Regulations were updated and introduced the disposal of complaints by consent. This revised guidance will apply to all cases considered by the Investigation Committee, the Disciplinary Tribunal or the Appeals Tribunal on or after 1st January 2025.

1.2 The Guidance is to be used by the Investigatory Committee, where a prima facie case has been found and the member has admitted the breaches and disposal by consent is proposed in accordance with the consent order procedure, by the Disciplinary Tribunal and Appeal Tribunal when they are considering which sanction(s) to impose upon an individual or firm against whom a finding has been made. The Disciplinary Tribunal only hears cases that have been referred to it by an Investigation Committee who have identified a prima facie case.

1.3 The Guidance is intended to produce a structured approach to decisions about the sanctions to be imposed either by consent of the CIOT/ATT member² under the consent order procedure or once a finding has been made against a member. 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 Investigation Committee, Disciplinary Tribunal and Appeals Tribunal, hereinafter referred to collectively as "the Tribunal", and which matters the Tribunal may consider when coming to a decision.

1.4 This Guidance is not to be regarded as restrictive. Each case will be judged on its own facts and sanctions should take account of mitigating and aggravating considerations. 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.

1.5 The range of sanctions that is available to the Tribunal are set out in Regulation 8.2 and 20.7. These are discussed in Section 3 of this guidance, with examples of their application to situations in Section 4.

1.6 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.

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 of the CTA and ATT exams, affiliates (including ADIT affiliates) and firms, unless specified otherwise.

SECTION 2: PRINCIPLES AND PROCEDURES

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 intended to be purely punitive, although it may have that effect. It 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 current edition of PRPG was issued in 2018, updated in 2021. 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.

The current edition is effective from 1 January 2023 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](#)

PCRT is also supported by topical guidance covering the application of professional standards to the provision of R&D tax services.

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 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.

2.10 The Tribunal may deviate from this Guidance but should have good reasons to do so and must include in the decision why the deviation is held to be appropriate.⁴

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 IOT - <https://www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt> ATT - <https://www.att.org.uk/professional-standards/professional-conduct-relation-taxation>

⁴ See, for example, GMC & PSA v Bramhall 2021 EWHC (Admin): a sanction that deviated from the sanctions guidance could be valid but without explanation was liable to be struck down.

Rehabilitation of Offenders

2.11 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.
- 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

2.12 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 either disposed of on terms agreed with the member or referred to a Disciplinary Tribunal ('DT') to hear the case formally.

2.13 The IC also has the power to refer the complaint to an Interim Orders Panel ('IOP') where a member who poses a particular threat to the public such that it is considered to be in the public interest or necessary for the protection of the public that membership should be suspended pending disposal either by the consent order procedure or following a disciplinary tribunal hearing. The IOP will be convened shortly following the IC decision.

2.14 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 member, including difficulties over presenting submissions

2.15 If the IOP considers that the continuing membership of the member 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. The IOP would normally ask itself whether or not the result of a case before the DT would be a likely suspension or expulsion.

2.16 Whilst the IOP's main focus is on the appropriateness of the continuing membership of a member, the IOP may also hear cases concerning students. In such cases, the interim order, if found appropriate, would be to suspend the right of the student to sit exams and to receive any student benefits.

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

2.18 This section is a brief summary of the IOP procedure. Reference should be made to The Taxation Disciplinary Scheme Regulations 2014 (as amended January 2024), Part four, regulations 7 and Part five, regulations 10-12 for full details.

Appeals

2.19 The ISG is concerned with sanctions, but it is appropriate to outline the Appeals process that is available, both to members and to the member bodies. Part 7 of the TDS Regulations sets out the powers and rules around appeals but in outline

- The Board or the Defendant may appeal a Tribunal decision, in writing within 21 days of the date of the Tribunal's order
- The grounds of appeal are limited to:
 - Serious procedural irregularity before the Tribunal
 - The decision of the Tribunal was wrong and/or the sanction was unreasonable (having regard to all the circumstances)
 - New pertinent evidence has become available which would have materially affected the Tribunal's findings
- An appeal will normally mean that there is a stay placed on any fine or costs order, but other decisions of the Tribunal would apply unless the Appeals Assessor ('AA'), or Tribunal decides otherwise (Reg 21.3). Publicity for the Tribunal's decision will be delayed until after the conclusion of the Appeal process.
- The initial stage will be considered by an AA.
- If the AA is satisfied the appeal is valid, then an Appeal Tribunal will be set up to hear the appeal.

2.20 It should be noted that the TDB may appeal against what it considers to be a disproportionate sanction.

SECTION 3: DESCRIPTION OF THE SANCTIONS AVAILABLE

3.1 Under the Taxation Disciplinary Scheme Regulations 2014 (as amended in January 2024), the Tribunal has the power to impose more than one sanction for the same offence.

3.2 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 Reg 20.7(f)(i)

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

(3) Order an apology Reg 20.7(f)(ii)

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.

(4) Warning Reg 20.7(f)(iii)

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

(5) Censure⁵ Reg 20.7(f)(iv)

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.

A censure should remain on the TDB's public record for a period of five years unless otherwise ordered by the Tribunal.

(6) Fine Reg 20.7 (f)(v)

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. Other examples would be where the Member has profited financially from his conduct, or where the Tribunal considers that a fine would be more likely, on its own or combined with another sanction, to ensure the conduct is not repeated.

The current maximum fine per proven charge is £25,000

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? 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.

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.

(7) Suspension of membership Reg 20.7(f)(vi)

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 Reg 20.7(f)(vii)

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 decision 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 in exceptional circumstances, for example persuasive evidence of rehabilitation.' (For further comments about readmission, see paras 3.4-3.5 below).

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

(9) Compensation Reg 20.7(f)(viii)

Where a charge of Inadequate Professional Service, lack of professional competence or failure to take due care 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 Tribunal may also take into account the complainant's costs incurred in bringing the complaint. The Tribunal would naturally take into account any compensation already made by the member.

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, but it is expected that the complainant will pursue their losses through other routes.

(10) Imposition of conditions on the member Reg 20.7(f)(ix)

Under the Regulations, the Tribunal has the power to allow the member to continue to practise as a professional member, but with certain restrictions.

Where any charges have been proved and the Tribunal are considering the appropriate sanction or, where an Investigation Committee are proposing terms for a consent order, the Tribunal should also consider making any appropriate orders compelling the member to perform a specific task, for example, file an outstanding annual return, file an AML registration form, pay a registration fee.

When making such an order the Tribunal must state as part of the order any date by which such action must be taken. Failure by the member to perform the task ordered could result in further disciplinary action.

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.

(11) Recommendation of removal from a register Reg 20.7(f)(x)

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.

(12) Other sanctions for students or other regulated persons Reg 20.7(f)(xi)

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 Reg 20.7(f)(xii) and Reg 27

There is further guidance on the award of costs at Annex B.

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 reimburse the TDB for the costs incurred in bringing the proceedings; and
- Any order imposed must never exceed the costs actually and reasonably incurred.

As 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.

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

(14) Publicity Reg 28

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's guidance on the publication of Tribunal decisions is in Annex A.

The full decision of the Tribunal will normally be published on TDB's website, subject to the points above. Consideration will be given to whether it would be appropriate to redact any aspect of this decision, for example the name of the complainant where this was an individual. Arguments for any redaction may be made to the Tribunal and may result in the Tribunal making recommendations on the point.

Reapplications after expulsion

3.3 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 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.

3.4 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 A). 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 allegations(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 acts as a starting point before the Committee or Tribunal takes into account any aggravating and mitigating factors relevant to the allegation(s) which may increase or decrease the sanction. Factors that could be considered aggravating or mitigating are provided for each category of complaint and are intended to be examples only and not an exhaustive list. 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

4.5 With regard to criminal conviction cases and cases involving findings by other regulatory bodies, when imposing a sanction, the Tribunal should take into account that the Member has already been punished by the court or by the other professional body. The sanction it should consider should therefore relate to the discredit that a criminal conviction or finding by another professional body brings to the Member, CIOT/ATT and the profession.

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

(1) CRIMINAL CONVICTIONS RELATED TO PROFESSIONAL WORK (including findings of dishonesty by other disciplinary bodies)

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: Censure and Fine £2000

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

There may be arguments that the issue was due to a 'lack of understanding' rather than dishonesty. This would normally be an objective test (what would reasonable people think?) coupled with consideration of the defendant's actions.¹¹ Failure to admit misconduct does not aggravate the misconduct alleged to have taken place.¹² Misinformation may also be a factor that tends towards dishonesty – for example an assertion that 'HMRC have cleared this' when the defendant knows this is not the case.

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

¹¹ See cases such as *Ivey v Genting Casinos (UK)* [2017] *Sawait v GMC* [2022] EWHC 283 (admin).

¹² See *GMC v Awan* [2020] EWHC 1553

(2) CRIMINAL CONVICTIONS UNRELATED TO PROFESSIONAL WORK

Misconduct which resulted in a conviction¹³ 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'.
- 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 harming 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

¹³ 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.

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). The Tribunal should have regard to the full range of sanctions that are available, from No Further Action to Expulsion where Expulsion would be appropriate where a custodial sentence had been imposed, Censure and Fine where a custodial sentence was not imposed and a warning where the nature of the offence was a summary only matter.

(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 and Fine £2000 (for two occurrences of seriously defective work or a seriously culpable single occasion)

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 client¹⁴
- 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 (Suspension may be appropriate for repeated offences) and fine £3000

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

Aggravating factors

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

Mitigating factors

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

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

¹⁴ 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.

(5) INADEQUATE PROFESSIONAL SERVICE (“IPS”)

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

Guideline: Censure and fine £3000

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 for 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 and fine £5000

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. They naturally exclude 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 views 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 and Fine £5000

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)
- Failure to report acceptance of a caution for a criminal offence
- Failure to report committing a summary only road traffic offence¹⁵

Guideline: Censure and fine £1000

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).

¹⁵ Not applicable for a speeding offence where a fixed penalty is accepted, or a driving awareness course is completed

(9) PROFESSIONAL BEHAVIOUR

Members are expected to behave in a professional manner at all times, so acting in such a way as to bring the member, the ATT, the CIOT or the tax profession into disrepute will be considered under this heading. Misuse of social media is likely to be considered under this heading as will significantly unprofessional behaviour in meetings or wider interactions with HMRC or other government bodies.

Guideline: Censure and fine £3000

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
- Significant expression of racist, homophobic or equivalent views
- Extreme language used in social media
- 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 ISSUES¹⁶

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 cheat¹⁷
- 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).

¹⁶ Students covered by the ISG are students studying for the exams of the two member bodies, i.e. those taking the CTA and ATT exams.

¹⁷ This includes the use of electronic devices to access such materials.

(11) AML RELATED BREACHES

The types of failure likely to fall under this heading include

- Failure to submit initial registration for AML supervision (when starting to trade or ceasing supervision with another body or HMRC)
- Failure to pay back fees for earlier years (arising on late registration)
- Failure to complete annual renewal/pay renewal fee
- Failure to pay fixed fine for late renewal
- Failure to agree to an AML visit
- Failure to respond to AML compliance related queries
- Failure to deal with action points set out following the review of AML renewal forms, or AML visits (in person or online)
- Failure to notify of cessation of trading
- Failures to meet the requirements of the Money Laundering Regulations e.g. AML training, client due diligence, ongoing monitoring, provide criminality checks
- Failure to report money laundering

Guideline: Censure + Fine £1000 for failure to ensure appropriate supervision; £3000 for breaches of Money Laundering Regulations; £5000 for failure to report money laundering¹⁸

Aggravating Features

- Scale of breach or failure
- Prejudice to third parties
- Intent or reckless conduct

Mitigating Features

- If the reporter is under duress or there is a threat to their safety; or
- If it is clear that a law enforcement authority (in the UK) is already aware of all the relevant information that the business holds, or all the relevant information is entirely in the public domain. This is not intended to be an exhaustive list. Moreover, reporters should be aware that it will ultimately be for a court to decide if a reporters' excuse for not making an authorised disclosure report under Section 330 of POCA was a reasonable excuse. Reporters should clearly document their reasons for concluding that they have a reasonable excuse in any given case and, if in doubt, may wish to seek independent legal advice.

¹⁸ Regulation 49(1)(d) of the Money Laundering Regulations 2017 requires a professional body supervisor to make arrangements to ensure that contravention of a relevant requirement by a member of their supervised population renders that member liable to effective, proportionate and dissuasive disciplinary measures under the professional body's rules. See OPBAS sourcebook <https://www.fca.org.uk/publication/opbas/opbas-sourcebook.pdf>

PUBLICATION OF DISCIPLINARY AND APPEAL DECISIONS

1. This part of the 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. It also covers the general issue of when publicity is given to disciplinary proceedings.

2. General principles

2.1 There are three overriding general principles to the TDB's policy on when and how publicity is given to disciplinary matters:

(1) the existence of a complaint against a member is a private matter, known only to the complainant, member and the TDB, until such time as a case is listed for DT hearing. It follows that if the Reviewer or IC decides there is no case to answer, then there will be no publicity around the matter.

(2) 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').

(3) any publicity relating to complaints addressed in TDB disciplinary hearings should reflect the need to protect the interests of third parties.

2.2 The first time that publicity will be given to a complaint will therefore be when a case is listed for hearing before the DT. Such notice will normally be given on the TDB's website (see also 3.2 below).

2.3 The purpose of publishing the Decision is not intended to be punitive, nor a sanction in itself¹⁹ 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.

¹⁹ The TDB is aware that in some areas publicity is seen as a sanction/punishment, but this is not the TDB's stance or policy.

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

- Members of the public, the participant bodies²⁰ 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.

2.5 Material within the Decision bearing on continuing third party proceedings (for example, judicial proceedings or confidential commercial matters) or the welfare of vulnerable third parties including children should be identified in the course of drafting for redaction from the published version of the Decision while such considerations apply.

2.6 The TDB's default position is that the Tribunal should anonymise the names of third parties (whether individual or corporate) referred to in the Decision (referring to them as, for example, "Person A", "Witness B", "Client C") in the interest of protecting their identity. The Tribunal has discretion to depart from the default position and to refer to such third parties by name where the circumstances of the case means that the identity of the third party and their involvement in the case is already in the public domain, or their consent to be identified in the published Decision has been given, or in exceptional circumstances where it is necessary for them to be identified and that their interests would not be compromised by the publication of their involvement with the case in the published Decision. This discretion should be used sparingly, and the Tribunal should provide a justification for departing from the TDB's default position.

2.7 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 With the exception of Consent Orders imposed under Regulation 8, decisions of the Investigation Committee ('the Committee') are not published. The Committee does not sit in public and does not impose sanctions with the exception of those agreed under Consent Orders. The principles set out in this appendix concerning decisions made by the Disciplinary Tribunal apply to Consent Order decisions made by the Investigation Committee.

3.2 Where the Committee decides that there is a prima facie²¹ 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 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.

²⁰ The participant bodies are the TDB's two sponsors, the CIOT and ATT

²¹ 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.'

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 without naming the member, but the Tribunal should establish whether the Member wishes their name to be published under these circumstances.

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 to order that there should not be publication of the name of the member or appellant, or the details of orders made against the member.

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.

5.6 A Tribunal decision of 'No further action' is a decision of the Tribunal and in principle would normally lead to publication of the matter. However, the Tribunal should consider, in line with the previous paragraphs, whether and to what extent normal publication is appropriate, no doubt bearing in mind that the existence of the case will already be in the public domain.

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 TDB 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 TDB 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.

6.4 The full decision of the Tribunal will normally be published on the TDB's website. Consideration will be given to whether it would be appropriate to redact any aspect of this decision, for example the name of the complainant where this was an individual. Arguments for any redaction may be made to the Tribunal and may result in the Tribunal making recommendations on the point.

7. Removal of Decisions from website

7.1 All decisions will remain on the Board's website for a minimum of five years, from the date of the Decision of the Tribunal hearing. After five 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 five 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 TDB's website indefinitely. Should the member reapply for membership and succeed 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.

8. Policy note on publicity

8.1 The TDB has published on its website a brief summary of its policy on publicity.²²

8.2 One point made in the summary is where the existence of the complaint is public, for example because the respondent member has confirmed the complaint, TDB will not initiate any statement but will not maintain a futile “no statement” position.

²² See ‘TDB Policy - Public Comment on the making of a Complaint’ <https://tax-board.org.uk/>

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 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.

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 20.7(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. For example, a defendant who fails to engage with the TDB in investigating and prosecuting a complaint can increase the time spent by the TDB in doing so, adding to its costs. The primary concern in making an order for costs is to do justice between the parties.

4.3 The TDB endeavours at all times to operate efficiently, economically and in a timely manner. It takes care to avoid unnecessary costs but recognizes that additional costs may be incurred to prevent undue delay to its investigations and proceedings. The TDB will usually instruct counsel to present cases to the Interim Orders Panel, the Disciplinary Tribunal and the Appeal Tribunal.

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
- The fees and expenses payable to members of the Disciplinary Tribunal
- 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 Clerk. (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 charge(s) 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 direction by the Tribunal in relation to instalment payments, the TDB has on a subsequent application by the defendant, discretion to allow payment by instalments.

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 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 the 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 20.6 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.²³

²³ 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 Clerk to Disciplinary Tribunal	
		Hearing cost of Clerk to the Disciplinary Tribunal	
		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 are 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 refreshments 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.²⁴
- (ii) If the case occupies under ½ day (or continues onto a part of a second day) it may be appropriate to charge costs of £800 for the half day. This is dependent on there being other cases on the Tribunal's schedule as Chair and Panelists' daily fees may nonetheless be incurred on the instant case.
- (iii) The travel and accommodation costs of the Tribunal
- (iv) If the hearing involves a recorder/secretary, their fee will be charged.
- (v) The clerk to the Tribunal charged at £600 per day.
- (vi) 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. This may be within the £1,750 daily rate in the previous paragraph or charged separately.²⁴

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. Members' travel and accommodation 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 £420. 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 £180. 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 £720. 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.

²⁴ The £1,750 is made up of the Chair's fee (£450), Panelists' fees (2 x £350), plus the Chair's drafting fee (approximately £400 per day). The balance of £200 may not be charged but covers extra drafting costs, TDB admin costs etc. as necessary.

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 £600. 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 TDB will be more.