Facing a complaint

Professional standards



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In the first of this series, *Heather Brehcist*, Head of Professional Standards at CIOT, sets out some of the triggers for a referral to the Taxation Disciplinary Board

Key Points

What is the issue?

The Taxation Disciplinary Board (TDB) is an independent body set up by the CIOT and ATT to handle complaints against members and students.

What can I take away?

Members can contact the Professional Standards team to discuss any aspect of the professional standards rules and guidance.

What does it mean to me?

It is clearly advisable to do one's best to avoid being referred to the TDB but sometimes it is out of the member's control.

The Taxation Disciplinary Board (TDB) is an independent body set up in 2001 by the CIOT and ATT to handle complaints against members and students. For the remainder of this article, 'member' can be read as including student. The Investigation Committee and Disciplinary Committees of the TDB comprise tax professionals and lay members.

Happily, most members never have to engage with the TDB but it is useful to understand what might trigger a referral so that they can take steps to avoid that happening.

Why is this significant now?

Over recent years, there has been an increasing expectation from HMRC and other government agencies, as well as the general public, that the professional bodies enforce and are seen to enforce their professional standards. This message was endorsed by the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) when it inspected the professional body AML Supervisors during 2018. This article is intended to give members a clearer picture of what might trigger a referral.

A member may be disciplined for failure to comply with the CIOT and ATT's Professional Rules and Practice Guidelines and/or Professional Conduct in relation to Taxation. It is the TDB, as an independent body, and not the CIOT or ATT, which undertakes any disciplinary proceedings.

In summary, there are three ways in which a member can be referred to the TDB:

- a complaint by a member of the public;
- referral by HMRC; and
- referral by the CIOT or ATT.

Each of these are discussed in more detail below.

Referral by a member of the public

Very often, a referral will be made by a client or, perhaps more likely, a former client. Typical complaints can include a failure to respond to communications from the client, failure to advise of the risks of the suggested tax planning, missed deadlines and dishonesty. Sometimes the referral might be made by another adviser; for example, the new adviser who is struggling to obtain the necessary handover information or an adviser who believes the member has incorrectly handled the client's tax affairs.

Occasionally, complaints concern fee disputes; however, these are not a matter for the TDB but instead for the member and complainant to resolve through negotiation, mediation or the courts.

Referral by HMRC

Over the years, HMRC have complained about poor behaviour and standards by tax agents, including some who were members of a professional body. When the professional bodies asked HMRC for details so that they could address the issue, HMRC felt unable to release the information because of the Commissioners for Revenue and Customs Act 2005.

More recently, however, HMRC have entered into Memoranda of Understanding with many of the professional bodies, including CIOT and ATT, enabling them to disclose cases of serious misconduct. It is HMRC's stated aim to increase the number of referrals to the professional bodies as they develop the reporting mechanism with HMRC.

Referral by CIOT or ATT

Under 2.14 of Professional Rules and Practice Guidelines, a member is required to notify the CIOT or ATT in writing, addressed to the Head of Professional Standards CIOT or ATT as appropriate, within two months if they are arrested on suspicion of,

charged with, or convicted of a criminal offence (other than a ‘summary only’ road traffic offence). A criminal offence includes an offence committed in the UK or abroad.

Ordinarily, the CIOT or ATT will not refer a member to the TDB until the outcome of the criminal proceedings is known but there may be occasions when it is in the public interest to do so earlier in proceedings.

A member is also required to notify the CIOT or ATT if they:

- are notified of disciplinary and/or regulatory action upheld against them by another professional body to which a member belongs or by a regulator;
- are dismissed for misconduct/gross misconduct by their employer;
- are disqualified as a director or trustee, or enter into a disqualification undertaking;
- receive a dishonest tax agent conduct notice; or
- receive a monitoring notice from HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation.

A member will be referred to the TDB in relation to the event notified and it will be for the TDB to determine what action, if any, is appropriate.

There are certain specific professional obligations which members must observe, such as undertaking continuing professional development (CPD), holding professional indemnity insurance (PII), as applicable, and registering for AML supervision, as applicable. Where the CIOT or ATT become aware that the member does not hold PII as required, the member will be given six weeks in which to arrange current cover and retroactive cover (if available). Failure to do so would result in referral to the TDB.

Where a member has not complied with the CPD obligations, they will be helped to identify how they might bring their CPD up to date and supply a CPD plan for a 12 month period. Quarterly updates should be supplied by the member and if they fail to meet their commitment to carry out CPD, they will be referred to the TDB.

Please note, however, that if the CIOT or ATT discover that a member has claimed they hold PII or have undertaken CPD when that is not the case, that is regarded as a serious matter and they will be referred to the TDB for a breach of the Fundamental Principle of Integrity.

Annual return

The annual return which has been in place for seven years included conduct questions for the first time in 2018. There have been a number of cases where members have disclosed for the first time reportable offences dating back many years. It has been agreed that, ordinarily, for the 2018 return, with the exception of criminal offences, no action will be taken by CIOT, ATT or TDB in respect of those offences which are more than five years old; i.e. those that pre-date 1 January 2014. Where a criminal act was involved, each case will be considered on its merits.

What is the impact of a referral to the TDB?

It is clearly advisable to do one's best to avoid being referred to the TDB but sometimes it is out of the member's control. Occasionally, malicious or vindictive complaints are made without foundation and the TDB are alert to this.

Members should check their professional indemnity policy to establish whether they need to notify their insurer and be aware that an adverse disciplinary finding may result in a higher premium.

If a member is found to have breached the professional standards of the CIOT or ATT, a full report of the case is reported on the TDB website and a summary in *Tax Adviser* magazine. The member's name is only withheld in exceptional cases.

Help and support

We understand that it can be a worrying time for members who have been referred to the TDB. Members can contact the Professional Standards team at standards@ciot.org.uk or standards@att.org.uk to discuss any aspect of the professional standards rules and guidance. While they cannot comment on the particulars of a case, they can explain how the rules should work in practice. The Members Support Service (Tel: 0845 744 6611), which aims to help those with work related personal problems, can also provide a listening ear. An independent, sympathetic fellow practitioner will listen in the strictest confidence and give support.

In the next article in the series, Des Hudson, chair of the Taxation Disciplinary Board, will explain what happens once a referral is made.

Please note that Anti-Money Laundering (AML) supervision and related disciplinary matters are closely linked to CIOT/ATT’s responsibilities as a statutory AML Supervisor and will be covered in a separate article at a later date.