

TAXATION  
DISCIPLINARY  
BOARD

ANNUAL REPORT

and

ACCOUNTS

2007

# THE TAXATION DISCIPLINARY BOARD 2007

## **Board Directors**

**Vicki Harris** MA, Ph D, FCCA, C Dip A F (Chairman) (2004)

**John Clark** MA, CTA (Fellow) (2005)

**Peter Gravestock** CTA (Fellow), FCA, ATT (2006)

(Year of appointment shown in brackets)

## **Executive Officers**

### **Executive Director and Company Secretary**

Neville Nagler MA

### **Secretary to Disciplinary Committee**

Peter Douglas FCA

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### **AIMS AND OBJECTIVES OF THE TDB**

The **aims** of the Taxation Disciplinary Board are to investigate complaints and take action against CIOT and ATT members who have breached professional standards; provided inadequate professional service; or behaved in an unbecoming manner, in order to:

- Protect the public, especially those who use the services of members of the CIOT and ATT;
- Maintain high standards of behaviour and performance among members of the CIOT and ATT;
- Ensure that confidence is maintained in the CIOT and ATT.

The **objectives** of the Taxation Disciplinary Board are to:

- Deal with complaints expeditiously, thoroughly and fairly;
- Be open, fair, transparent and cost efficient in handling complaints;
- Ensure appropriate disciplinary action is taken against those who breach the applicable professional standards, provide inadequate professional service or display unprofessional conduct;
- Provide some redress for those who receive poor service from members of the CIOT and ATT (although the Scheme is no replacement for Court action in serious cases).
- Where a complaint is found proven, recover the costs of handling that complaint from the member of the CIOT or ATT.

## **CHAIRMAN'S REPORT**

This is the first time that the Taxation Disciplinary Board (TDB) has presented an Annual Report. It marks the completion of our administrative separation from our two participants, the Association of Taxation Technicians (ATT) and the Chartered Institute of Taxation (CIOT). It is therefore a natural development so that we are appropriately accountable to those who appoint the TDB Directors and fund our work. We very much intend that this should become an annual event. Council members from our two participating bodies have asked for such a report, and I hope that they will find these contents of great interest.

The different sections of the report describe the history of the TDB; details of the procedures which we administer (under both the original Scheme and the new Scheme which came into effect in January 2008); information about the kind of cases we deal with; and statistical and financial information about our activities. I shall therefore focus upon the key developments of 2007.

### **Review of Scheme**

For the Board, the year was undoubtedly dominated by the review of the Taxation Disciplinary Scheme. We commissioned this early in the year, with the intention to introduce the new arrangements to come into effect by the end of the year. We almost met our target: the new arrangements were approved by the Council of the ATT in December and by that of the CIOT on 8 January 2008. The new Scheme came into operation the following day. It applies to all cases, except for those already in the system on that date where it was fairer to the member to continue the case under the previous arrangements.

Details of the new Scheme are in the main body of the Report. We believe it embodies the principles, jurisdiction and powers required by a disciplinary body at the outset of the twenty-first century. However, only

experience will confirm this. If relatively minor changes are needed, the TDB now has the power to amend the Regulations which govern the procedural arrangements. Major changes affecting the Scheme itself would continue to require approval by the Councils of both the ATT and CIOT.

Our aim is to ensure that there is a fair, thorough and independent investigation of every complaint referred to the TDB, and that any member against whom a complaint is made is fairly treated. The number of disciplinary cases involving members of the ATT and the CIOT is relatively small—around 30 to 40 a year. Members who conduct themselves in a professional manner are unlikely to be exposed to the disciplinary process. The disciplinary arrangements exist first and foremost to protect the public. But in doing so, they also protect members of the ATT and CIOT by upholding professional standards and ensuring the public has confidence in the tax profession.

### **Recruitment and training of committee members**

Our Committees comprise both members of the ATT and CIOT and lay members who do not belong to either body. The Board spent time during the year in recruiting new members for our Committees. We undertook an open selection process, designed as far as possible to meet the Nolan principles which apply to appointments to public bodies. As a result we appointed six new lay members, five for the Investigation Committee and one for the Disciplinary Committee. Between them they have brought a wealth of experience from other regulatory bodies, which is being applied to great effect in considering the issues raised within the TDB. With the change from committees to panels under the new Scheme, we have been reviewing the composition of the new panels and are now seeking to ensure an adequate balance in terms of the skills required and the length of membership.

One of our innovations last year was to arrange training for all members of the Investigation Committee, including the new lay members. The two sessions, provided by an external trainer focused upon structured decision-making, with a particular emphasis upon the giving of reasons for every decision. This has clearly benefited the quality of decision-making, and has been reflected in the letters sent to inform members and complainants of the decisions reached by the Investigation Committee.

Later in the year we held a consultation meeting to brief all Committee members on the Board's proposals for the new Scheme and Regulations, and to hear their comments on the changes we were proposing. As part of the feedback process, the Board decided to drop from the new arrangements a proposal to introduce summary tribunals to deal with the more straightforward cases where the Investigation Committee had found a prima facie case. In the light of the views expressed by Committee members, we decided that all such cases would go before a Disciplinary Tribunal for a full hearing. Since the new Scheme was introduced, we have held two further training sessions on the new arrangements. As a result, every member of the Investigation and Disciplinary Panels has received training in the new procedures.

It is with great sadness that I must record the death of Marion Simmons, QC on 2 May 2008 following a long illness. She chaired the Disciplinary Committee and gave freely of her advice and considerable expertise to help the Board in devising the new Scheme. She will be remembered with affection and admiration by many.

### **Directors and staff**

Over the year as a whole, the Board's Directors have had an extremely busy time. I am enormously grateful to my two fellow Directors, John Clark and Peter Gravestock, for their substantial and vital contribution to our decision-making. Their professionalism,

wisdom and commitment have played a major role in crafting the new Scheme and Regulations, and both have devoted many days to the work of the Board, far in excess of the call of duty.

Until the start of 2007 all the day to day administrative work and running of the disciplinary scheme was undertaken by ATT and CIOT members of staff. They combined TDB work with their other demanding roles for the ATT and CIOT and this inevitably lead to additional pressures on them. A great debt of gratitude is due to Andy Pickering (former Secretary of the TDB and responsible overall for the operation of the Scheme as well as being Secretary to the Appeal Committee); to Philip Pearson (Secretary to the Investigation Committee); to Heather Brehcist (Conciliation Officer); and to Jonathan Crump (Secretary to the Disciplinary Committee, who also handled all the TDB finances).

All these roles were brought together (save for conciliation) in the appointment of our new Executive Director, Neville Nagler. I would also wish to thank him for all his efforts on behalf of the Board. Although appointed to work three days a week, Neville Nagler has been prepared to work way beyond that in order to see through the Board's workload with his customary efficiency. He is not only skilled in drafting policy papers and correspondence, but he has also had to set up new financial and banking arrangements for the Board, which were previously handled within the CIOT. Looking at the range of work which our Executive Director has handled over the year, I cannot imagine how we would have managed without this new arrangement.

The Executive Director experienced a considerable burden of work in undertaking the initial investigation of every complaint, supporting the work of the Investigation Committee and assisting the Board with the review of the old Scheme and implementation of the new one. Because of this we needed additional resources to

prepare cases for the Disciplinary Committee (and catch up on the backlog of cases that had accumulated). So we created a separate post of Secretary to the Disciplinary Committee, and appointed Peter Douglas to manage the caseload for the Committee hearings. He works for approximately one day a week for the Board. These were necessary changes, not only to enshrine the requisite independence of the disciplinary process from the ATT and CIOT, but also to ensure that cases are dealt with in a timely fashion and to eliminate the backlog of cases awaiting resolution.

### **Financial matters**

The financial information contained in this report shows how modest our overall costs are. We have calculated that the overall cost of the Board works out at £3,686 per case (£2,690 if last year's exceptional one-off costs are excluded) or approximately £5.40 per member (£4.03 excluding exceptional costs). These figures are significantly lower than the costs of other disciplinary bodies who have published comparable information.

My aim, and that of my fellow Directors, is to continue to run the Board efficiently and effectively. But regulation undoubtedly comes at a price. The levels of fees and salaries paid by the TDB are not over-generous. Good regulatory practice requires that there is open recruitment and appointment of panel members and their training. Without the services of an in-house lawyer, we also have to pay Counsel to present cases to the disciplinary tribunals. All this costs money.

The TDB looks carefully at all its costs and attempts as far as possible to minimize them. We have taken steps to enhance the efficiency of the disciplinary scheme for the ATT and CIOT. The new Scheme now explicitly provides for small Investigation Committees (with up to 5 members) to consider the cases in the first instance (in contrast to the original practice of all 12 members considering every case).

Furthermore, we now have an economical fast track process for handling administrative complaints such as failure to return CPD forms when required.

Whilst the costs of running the Scheme necessarily fall on all the members of the ATT and CIOT, we believe it is only fair that the specific costs of dealing with a complaint fall on those whose conduct lead to the complaint being made. This is reflected in our policy that the "polluter pays", and we have issued explicit guidance for levying costs on members against whom disciplinary findings are made.

All these measures should reduce the financial call on the ATT and CIOT. Overall we consider that the TDB is economical in its expenditure. As the new Scheme beds down, we will continue to monitor costs carefully and strive, wherever possible, to reduce them.

### **Looking ahead**

2007 has been a challenging year for the TDB. But with the new Scheme and the other innovations which I have mentioned above, I believe that the TDB is in much better shape to perform its role. In the coming year, as the new Scheme beds down there are a number of topics on which we plan to issue guidance to the panels. Particularly important will be the provision of Indicative Sanctions Guidance as a means of securing a measure of consistency in the sanctions imposed by tribunals. So there remains a busy programme for the TDB. What remains the most important component of our work is to operate our procedures in such a way that the participant bodies, the profession and the public as a whole have confidence in the Board and know that if there is a complaint it will be dealt with fairly, efficiently and transparently.

**VICKI HARRIS**  
**Chairman**

## **EXECUTIVE DIRECTOR'S REPORT**

Taking up any new post is nearly always a challenging prospect. All the more so when you are not taking over the work of any single individual. And when this is coupled with having to set up a whole fabric of new administrative arrangements in order to do the job, the prospect can be particularly daunting.

### **Office set-up**

I took up my position with the Board in late January, in the expectation of working an average of three days a week from home. That necessitated a raft of practical arrangements in order to enable the TDB to operate from Pinner, with remote access to the main computer set-up at 12 Upper Belgrave Street. Needless to say remote working on a laptop is not without its occasional difficulties, but the arrangement ensures that I can usually access the TDB's files stored on the CIOT's server. We rapidly arranged for a PO Box for all correspondence, and for the most part communications have been excellent.

The other practical challenge was to set up new operating arrangements for the TDB's finances. As part of the move towards administrative autonomy, it was decided that, in place of the former arrangement whereby all the TDB's finances had been handled by the CIOT's finance department, the TDB would receive quarterly contributions from both of the participant bodies and assume responsibility for dealing with all the Board's expenditure. That called for the preparation of a budget for the TDB, which had to be approved by the two bodies, and new banking arrangements. Once all the practicalities were sorted, the new arrangements have worked well, and we are grateful for the help we received from officers in the CIOT in setting up the new systems.

These arrangements have provided the essential underpinning to enable the TDB to function efficiently. But the main focus for my work has involved the processing of complaints and support for the Directors on significant issues of policy.

### **Handling complaints**

Over the year as a whole the TDB received 35 new complaints, a record number. The statistics of these complaints are described later in this report. Suffice to say that where the complainant is a member of the public, each complaint that reaches the Investigation Committee will have entailed several rounds of correspondence. It can prove quite time-consuming if complainants or members are slow to respond and require reminders. The Board has set down timescales for the processing of different stages of a complaint and examines the reasons where these targets are not met. Once the correspondence is complete, usually after two contributions from both the complainant and the member, the Board has introduced a new procedure whereby I prepare a case summary for the Investigation Committee. This has facilitated the work of the Committee, so that instead of receiving all the correspondence with supporting documents in an unprocessed condition, for each case the Investigation Committee now has a summary accompanying the key documents.

I act as Secretary to the Investigation Committee, and follow up on all its decisions. Last year the Committee held six meetings and examined 23 cases. I also processed 15 cases which were withdrawn by the complainant before reaching the Committee. (The detailed statistics are set out on Pages 15—19 below.) In each case the Committee's findings, with the reasons for its decisions, were sent to the complainant and to the member, whilst the CIOT and the ATT were also kept informed. Where a case was referred to the Disciplinary Committee, I would also prepare the papers, so that the Secretary to that Committee could refer them to Counsel in order to prepare the charges. I also liaised with the CIOT or ATT over the arrangements for bringing cases before the Disciplinary Committee, since under the former Scheme it was the responsibility of the two participants to present cases to that Committee. In the course of the year, the Board appointed Peter Douglas as the

Secretary to the Disciplinary Committee, in order to relieve the CIOT of the responsibility for undertaking the practical arrangements for hearings of the Disciplinary Committee.

### **Legal review**

A significant part of my role during the year related to the Board's review of the Scheme and Regulations, which is described elsewhere. At each stage of the process, beginning with the appointment of the lawyers undertaking the review, there were papers to prepare setting out the Board's policy and then assessing their translation into specific drafts and redrafts of the eventual new arrangements. This proved a fascinating, albeit exhaustive, process. And with the new Scheme and Regulations brought into force in January 2008, my next challenge is to prepare first drafts of all the issues on which guidance is required in order to ensure the smooth functioning of the new arrangements.

### **TDB Board**

As Secretary to the Board, I have worked closely with the Directors throughout the year. Part of my role is to follow up on all decisions reached by the Directors, whether at Board meetings or less formally. These include matters relating to the appointment of committee (now panel) members, the determination of procedural arrangements and timescales for the processing of cases, and the resolution of matters of policy as they arise on an ad-hoc basis. During 2007, the Board met on eleven occasions, six of which were related almost exclusively to the legal review. In the coming year, the Board intends to revert to its more normal pattern of quarterly meetings.

Overall, 2007 proved an extremely challenging year for the TDB, but the result has been the development of a structure better suited to meeting its core tasks of investigating complaints brought against members of the two participant bodies and disciplining those against whom a prima facie case has been made out. The procedural changes have sought to enhance the independence, accountability, transparency and effectiveness of the TDB. Whilst in reality the volume of work falling to the Executive Director has called for an input closer to four days a week than the expected three, viewed from my former perspective as a senior civil servant I believe that the TDB delivers excellent value for money. Given the tasks required of any professional disciplinary body in today's climate, the TDB operates efficiently and effectively. Its overall budget and unit costs are modest, particularly when compared with those of other regulatory bodies.

In setting up the new arrangements over the past year, I have been greatly assisted by those staff members previously engaged on work for the TDB. These include Andy Pickering (former Secretary to the Board), Phillip Pearson (former Secretary to the Investigation Committee) and Jonathan Crump, (former Secretary to the Disciplinary Committee). I have welcomed the support provided by the new Secretary to the Disciplinary Tribunal, Peter Douglas. And most especially, I have valued enormously the advice and unstinting effort devoted by the Board's three Directors, headed by Vicki Harris, the Chairman.

**NEVILLE NAGLER**  
**Executive Director**

## **TIMESCALES FOR HANDLING COMPLAINTS**

The Board has considered and approved timescales for handling each stage of the complaints and disciplinary process. These are designed to ensure that the administrative processes are handled efficiently and expeditiously.

As soon as a complaint is received, the complainant is sent the Board's standard complaint form. Once this is returned, there will normally be two rounds of correspondence involving both the complainant and the member. The case is then prepared for a meeting of the Investigation Committee. Overall the Board anticipates that on average it takes around 3—4 months between receipt of the complaint form and the Investigation Committee hearing. In some cases, not every stage of the process will be required, for example where the complaint is made by one of the participant bodies and the issue is clear-cut. Delays may, however, be caused by either the member or the complainant in submitting correspondence. There may also be cases involving large quantities of paper which may arrive at a time when other work has to take priority. It may also be necessary to postpone a meeting of the Investigation or Disciplinary Committee until there is

sufficient business to warrant convening a meeting.

The Disciplinary Committee stages of the process are less easy to timetable than the earlier processes. The overall timetable depends largely on the member and the presenting barrister who are responsible for producing most of the documentation. There are also timed procedures laid down in the Regulations that applied under the original Scheme, whilst the two Response Forms, which were instituted some years ago by the Board, lay down their own procedural timescales. On average, however, the TDB aims to ensure that a Disciplinary Tribunal will take place within 5 or 6 months of the Investigation Committee decision.

Because the former Appeal Committee never met, the Board has not set down any timescales for that element of the process.

Now that the new Scheme has come into effect, the Board will be promulgating new timescales to reflect the changes in procedures contained in the 2008 Regulations.

## CASES HANDLED IN 2007

### Complaints received by TDB

The TDB received 35 new complaints during 2007. This was the highest total for any year since the Scheme started during 2001. The table below sets out the annual total of complaints received and cases disposed of by both the Investigation and the Disciplinary Committees. It demonstrates the fluctuations in the volume of complaints received and handled by the TDB since it was set up.

<u>Year</u>	<b>Complaints brought forward</b>	<b>New complaints</b>	<b>Complaints disposed of</b>	<b>Complaints carried forward</b>
2001(May-Dec)	0	4	3	1
2002	1	35	23	13
2003	13	22	29	6
2004	6	26	15	17
2005	17	17	26	8
2006	8	22	20	10
2007	10	35	35	10

The table below sets out in more detail the handling of cases by the TDB in 2006 and 2007.

	<b>Number of Cases</b>	
	<b>2006</b>	<b>2007</b>
<b>Investigation Committee</b>		
▪ Brought forward from previous year	7	8
▪ New cases in year	<u>22</u>	<u>35</u>
	<u>29</u>	<u>43</u>
▪ Cases withdrawn by complainant	7	15
▪ No prima facie case or no action taken	8	11
▪ Rest on file without costs	2	0
▪ Rest on file with costs	0	4
▪ Admonished with costs	1	1
▪ Referred to the participating bodies for presentation to the Disciplinary Committee	3	7
▪ Carried forward to next year	<u>8</u>	<u>5</u>
	<u>29</u>	<u>43</u>
<b>Disciplinary Committee</b>		
▪ Brought forward from previous year	1	2
▪ New cases referred in year by the Investigation Committee	<u>3</u>	<u>7</u>
	<u>4</u>	<u>9</u>
▪ Case dismissed	2	1
▪ Case proved	0	3
▪ Carried forward to next year	<u>2</u>	<u>5</u>
	<u>4</u>	<u>9</u>

In 2007, the 35 new complaints were made against 37 professional members, of whom 16 belonged to the ATT, 16 to the CIOT, 4 had dual membership and one was not identified by the complainant. In addition, eight cases were brought forward from the previous year, giving a total of 43 cases to process, five of which were carried forward to 2008.

### **Source of complaint**

The new complainants in 2007 fell into the following categories:

- 5 were from current clients
- 8 were from former clients
- 1 was from a relative of a client
- 4 were from advisers to a former client
- 2 were from former employers
- 1 was from a potential employer
- 1 was from a former business associate
- 5 were referred by the CIOT on the basis of reports of disciplinary action taken by the Institute of Chartered Accountants in England and Wales;
- 6 were referred by the ATT for failure to provide CPD returns
- 1 was anonymous
- 1 failed to put the complaint in writing

### **Grounds for complaint**

The 35 new complaints received in 2007 raised in total 50 separate grounds for complaint. These fell into the following categories:

Deception or dishonesty	4
Failing to respond to correspondence in a timely manner	13
Incompetence	9
Lack of objectivity	2
Professional misconduct	7
Conflict of interest	3
Poaching clients	1
Failure to submit CPD record	6
Failure to report disciplinary action taken by another professional body	<u>5</u>
 Total number of grounds for complaint	 <u>50</u>

### **Handling of complaints by Executive Director**

A number of cases were withdrawn before they reached the Investigation Committee. Six were withdrawn by the ATT: all of these related to the failure by the member to submit CPD returns when so requested by the ATT. In each case, following the intervention of the TDB, the required return was eventually

submitted. The ATT thereupon decided to withdraw its complaint, and no action was taken against the member. (Under the new Scheme such cases are likely to attract a fixed penalty, reflecting in part the amount of work required in order to secure submission of the return.) Two other cases could not be pursued by the

TDB because they involved a complaint against a firm which was registered with the CIOT as having CTA status. Under the original Scheme complaints made against a firm did not come within the jurisdiction of the TDB, but this omission has been rectified under the new Scheme.

In a further seven cases (including one received late in 2006), the complainant decided not to pursue the complaint. In most of these cases the complaint was withdrawn before the stage at which it would be sent to the member. In only one of the withdrawn cases was a reason given. In that particular case, the complaint had been put forward by a solicitor acting for two clients who were complaining about two members. The complaint was withdrawn after one of the members threatened the complainants with defamation proceedings, on the grounds that their complaints were baseless and contained libellous remarks about him; the solicitor made it clear that the complainants did not wish the TDB to continue with the case.

The processes for the handling of cases prior to their consideration by the Investigation Committee and the planned timescales are described on Pages 12-14 of this Report. At the end of the year five of the complaints received during 2007 were still at the correspondence stage, and were expected to go to the Investigation Committee early in 2008. Of the sixteen cases received in 2007 which went to the Investigation Committee during the year, the time taken between receipt of the complaint and the Committee's first consideration of the case broke down as follows:

<u>Time taken</u>	<u>Number of cases</u>
1 month	5
2 months	0
3 months	4
4 months	3
5 months	3
<u>6 months</u>	<u>1</u>
Total	<u>16</u>

In two cases the Investigation Committee requested additional information from both the complainant and the member. As a result, the time taken to reach its eventual finding in each of these cases was extended by three months—in one case to 6 months and in the other to 8 months. Part of the delay was caused by the fact that at some times of the year there can be a three month gap between meetings of the Committee.

The above figures show the total time taken between receipt of the complaint and the Investigation Committee meeting. No allowance is made for delays caused by members or complainants in responding to correspondence. In a case where two rounds of correspondence take place with both the member and the complainant, it is likely to take around four months before a case will be considered by the Investigation Committee. The cases which take less time are those which are more straightforward, particularly those where the member has failed to report disciplinary proceedings taken by another professional body, as less correspondence is required in order to establish the facts.

## **Investigation Committee**

The Investigation Committee held 6 meetings during the year. It considered 7 cases started in 2006 and 16 cases started in 2007; this left 5 complaints awaiting the Committee at the beginning of 2008.

Of the 23 cases considered by the Investigation Committee in 2007, it found no Prima Facie case in 7 cases. The allegations made in these cases ranged from dishonesty and poaching of clients to incompetence and conflict of interests. In a further four cases, the Committee considered that there was a Prima Facie case, but that the matters in question were too minor to warrant further action. Three of those cases involved the member's failure to report to the CIOT disciplinary proceedings undertaken by the ICAEW on matters unrelated to tax. In the other case, the member had put incorrect information on a business card used for a short period and had sent in a return on behalf of a colleague without making it clear on the return that it had not been sent in by the colleague.

In five cases the Committee decided to propose a consent order, which was accepted by each of the members involved. In each case, costs were awarded against the member. The conduct which was the subject of a consent order was as follows:

- One member was admonished for discreditable conduct. He had refused to supply the address of the CIOT when requested by his client and, by way of a riposte, had requested details of the client's employer, even though he clearly knew the answer.
- Four cases were ordered to rest on file for three years. Three such cases involved a failure to report disciplinary proceedings

by another professional body; these cases were regarded by the Committee as either being more serious than those where no further action was taken or else demonstrating a failure by the member to provide any explanation or apology for his conduct. The fourth case involved a failure by the member to deal with correspondence from a client and from a successor adviser.

The remaining seven cases considered by the Investigation Committee were regarded as sufficiently serious to be referred to the Disciplinary Committee.

## **Disciplinary Committee**

The Disciplinary Committee held one meeting in December 2007. Meeting in a panel of three, the Committee heard one case brought forward from 2006 and three cases referred in 2007. A further five cases were pending at the end of 2007.

Of the cases heard by the Disciplinary Committee, brief details are as follows:

- The member had been charged with a failure to respond to correspondence from the client and from his new adviser after the client had terminated his engagement with the member. The member had also failed to respond to any correspondence from the TDB relating to the complaint. Unexpectedly, the member turned up at the hearing and admitted the charges. He claimed to have been suffering from health problems at the time. In the light of his explanation, which was heard in closed session, the Committee decided that the member should not receive any sanction.



## COMMITTEE MEMBERSHIP

### Investigation Committee

The Investigation Committee had eleven members during most of the year. It normally sits in panels of five, and held six meetings during the year.

The members of the Committee, their category of membership, and the dates of their original appointment, are as follows:

<u>Name</u>	<u>Category</u>	<u>Date of first appointment</u>
Kenneth Crofton Martin (Chairman)	CIOT	15 March 2001
Helen Folorunso (Vice Chairman)	Lay	15 March 2001
Elizabeth Hinds	Lay	1 April 2007
Alison Middleton	CIOT	15 March 2001
Ken Monk	CIOT	15 March 2001
Brian Ogilvie	CIOT	23 January 2002
Marilyn Palmer	ATT	1 April 2007
Nicola Burnett Smith	Lay	3 October 2001
Barbara Stephens	Lay	1 April 2007
Linda Stone	Lay	1 April 2007
Rod Varley	Lay	1 April 2007

Barbara Stephens resigned from the Committee in February 2008.

### Disciplinary Committee

The Disciplinary Committee had seven members for most of the year. It held only a single meeting, sitting in a panel of three members. The panel is composed of a legally-qualified chairman, a member of the ATT or CIOT and a lay member.

The members of the Committee, their category of membership, and the dates of their original appointment, are as follows:

<u>Name</u>	<u>Category</u>	<u>Date of first appointment</u>
Marion Simmons (Chairman)	Lawyer	1 August 2005
Peter Newman (Vice Chairman)	Lay	15 March 2001
Ken Ball	Lay	1 August 2003
Julie Dingwall	ATT	1 October 2007
Henry Joseph	Lawyer	28 March 2001
Nick Lloyd	CIOT	30 May 2001
Michael Squires	CIOT/ATT	15 March 2001
Stephen Walzer	Lawyer	1 April 2007
Michael Warburton Wood	CIOT	15 March 2001

Henry Joseph's term of appointment expired on 31 March. Michael Warburton Wood's term expired on 31 March 2008, and Stephen Walzer resigned during March 2008. Marion Simmons passed away on 2 May 2008.

### **Appeal Committee**

The Appeal Committee had six members throughout the year, but held no meetings as no cases were appealed from the Disciplinary Committee.

The members of the Committee, their category of membership, and the dates of their original appointment are as follows:

<u>Name</u>	<u>Category</u>	<u>Date of first appointment</u>
Malcolm Palmer (Chairman)	Lawyer	16 March 2002
Paul Heim (Vice Chairman)	Lawyer	1 October 2004
Brian Cleave	Lawyer	1 January 2006
Shirley Leighfield	Lay	1 June 2004
Angus Nicol	Lawyer	1 January 2006
Tony Ring	CIOT/ATT	1 August 2003

Malcolm Palmer and Shirley Leighfield resigned on 31 December 2007. Tony Ring's term of appointment expired on 31 March 2008, and Paul Heim resigned in April 2008.

With the introduction of the new Taxation Disciplinary Scheme in January 2008, the three Committees were replaced by an Investigation Panel and a Disciplinary Panel. All members of the former Investigation Committee were invited to become members of the Investigation Panel, whilst most members of the Disciplinary and Appeal Committees were invited to join the Disciplinary Panel. The Board will be seeking to recruit additional members to the two panels during 2008.

## TRAINING

One of the significant innovations of 2007 was to introduce a compulsory training requirement for members of committees. The aim of the Board is to provide at least one day's training each year for every member of the Investigation and Disciplinary Panels.

Developments in the field of professional regulation over the past few years have significantly changed the way in which disciplinary bodies are expected to perform their roles. Indeed, the extent of these changes, even during the six years since the original Taxation Disciplinary Scheme was set up, prompted the legal review last year and led to the introduction of the new Scheme earlier this year.

It is incumbent upon regulatory bodies to ensure that members of their committees and tribunals are fully aware of recent developments which affect the conduct of their proceedings, particularly where there have been relevant court judgements. Whilst many members have experience derived from their involvement in other disciplinary bodies, the Board has taken the view that it is important to ensure that all members of TDB committees and tribunals receive the same training, as a means of ensuring a measure of consistency when applied to the sort of cases with which they are dealing.

In the early part of the year, two training sessions were held, primarily for members of the Investigation Committee; the Board Directors also attended, together with a newly-appointed member of the Disciplinary Committee. Only one member of the Investigation Committee was unable to attend either session. Both training events were led by Mary Timms, a solicitor at Field Fisher Waterhouse. Mary Timms has wide-ranging experience

in professional regulation, including the preparation and presentation of cases before disciplinary bodies, and has provided training for external committee members of many such bodies.

Topics covered during the training session included:

- Acting in the public interest
- Concepts of fairness and human rights
- Standard and burden of proof
- The Disciplinary Scheme and Procedure Regulations
- The role of the Investigation Committee:
  - The nature of a preliminary committee
  - Procedure
  - Structured decision making
  - Mitigation
  - The Shipman Inquiry—lessons learned about preliminary committees
- Giving reasons

The session ended by looking at some recent cases dealt with by the Investigation Committee in order to apply the lessons learned during the session to real scenarios.

As the legal review progressed during the year, the Board decided to hold a meeting in October for members of all three of the TDB committees. The purpose of this event was to brief members on the outline of the proposed new Scheme and Regulations at a time when the structure of the new arrangements was crystallising but before final decisions were taken. About fifteen members were able to attend the meeting, whilst others sent in written comments. The session was led by Peter Cadman, the partner at Russell-Cooke, Solicitors, who had led the legal review and the drafting of the new Scheme and Regulations.

The session focussed on the main components of the proposed new arrangements. Most of the changes proposed by the Board were welcomed by participants at the meeting. But one significant element of the Board's proposals was contested by many of the committee members: the establishment of a Summary Tribunal to deal with less serious cases of misconduct. The Board had originally proposed that the Investigation Committee should no longer have a power to make consent orders (see Page 12 above). Instead, such cases would be referred to a Summary Tribunal, which could deal with the case in a less formal way than a Disciplinary Tribunal. In the light of the concerns expressed and after careful consideration of the issues, the Board decided to drop the proposal for a Summary Tribunal.

Once the new Scheme came into effect in January 2008, two further training events were held so that all members of the new Panels could be briefed on the new arrangements. The training sessions were again led by Peter Cadman, together with Heather Brehcist, Standards Officer at the CIOT.

Heather Brehcist gave a briefing on the new Anti-Money Laundering Regulations which the Government had brought into effect in December 2007. (These are discussed more fully at Page 24.) This was followed by a discussion centred around the main changes which the new arrangements had introduced. The meeting then divided into separate sessions for members of the Investigation and Disciplinary Panels. Peter Cadman led that for the Investigation Panel, focussing on the criteria needed to establish a Prima Facie case and on the role of the Investigatory Assessor, a new function introduced by the Scheme. The Board's Chairman, Vicki Harris, led the session for members of the Disciplinary Panel, dealing with the Board's plans to issue later in the year guidance to tribunals on cost awards and Indicative Sanctions Guidance.

Overall these training events have received highly positive feedback from the members who participated. Further sessions are likely to take place once the Board has drafted guidance on some of the topics on which such guidance could be helpful to panel members.

## **THE TAXATION DISCIPLINARY SCHEME 2008**

In January 2008, a new Taxation Disciplinary Scheme came into operation, after securing the approval of the Councils of the ATT and the CIOT.

### **Background to review of Scheme**

When the original Scheme was drafted in 2000, it reflected good practice in professional regulation. But professional regulation has moved on over the past few years, so that the Scheme no longer reflected best practice.

Among the factors which have contributed to these changes were:

- A growing emphasis on the need for disciplinary bodies to be independent, and be seen to be independent, of the professions which they discipline by a separation from the bodies and the greater involvement of lay members in the process;
- Interventions and rulings by the courts, particularly on human rights aspects, which have affected the procedures adopted by disciplinary bodies;
- A growing disposition on the part of complainants to refer cases to disciplinary bodies and to expect fair and expeditious remedies;
- A broadening of the range of legitimate grounds for complaint to include providing inadequate professional services and engaging in conduct unbecoming a professional person, in addition to more specific breaches of the professional standards and guidelines of regulatory bodies.
- A need for greater transparency and openness in handling complaints and publicising the outcomes.
- A need for improved cost effectiveness, underpinned by the concept that the “polluter pays” rather than the profession as a whole.

In addition, the TDB needed to make some specific amendments to the Scheme in order to enable the ATT and the CIOT to meet their commitments to the Government that appropriate disciplinary action would be taken to deal with breaches of the new Anti-Money Laundering regulations, which took effect on 15 December 2007. It was therefore necessary to ensure that the new Scheme would apply to firms as well as to members, students and other associates.

Against this background, the Board had decided before last year that the Scheme would benefit from a fundamental review to ensure that its procedures would reflect recent court judgements and developments in best practice. The TDB recognised that its Scheme needs to protect not only the interests of members of the ATT and CIOT, but also the public interest and the interests of the complainant. Professional bodies are expected to arrange their regulation in a fair, proper and transparent manner and demonstrate regulatory independence from the representational activities of the bodies. The Legal Services Act 2007 required similar ring-fenced regulation for solicitors and barristers. So this concept would be familiar to those ATT and CIOT members who are also solicitors and barristers

To assist with the review, early in 2007 the TDB invited tenders from a number of firms of solicitors experienced in the field of professional discipline and regulation. Russell-Cooke was selected for the project. From the outset, the TDB was advised that, rather than approach the subject by piecemeal amendments, it would be better to create an entirely new Scheme and Regulations. While retaining much of the current structures and procedures, this would provide a clearer and more comprehensive framework for the disciplinary processes.

Against this background, the Board decided that the new Scheme should set out principles, jurisdiction and powers for the TDB, whilst all the details relating to procedures would be contained in the Regulations. In contrast, the previous Scheme contained much in the way of procedural details, which are now included in Regulations.

### **Basic principles**

The TDB is required to undertake the fair and expeditious handling, investigation and adjudication of complaints on an impartial and independent basis. The TDB is empowered to deal with complaints alleging breaches of professional standards and guidance, the provision of inadequate professional service and conduct unbecoming a professional person. Where a complaint is proven, the TDB has a responsibility to impose appropriate penalties or sanctions within the powers granted to it by the Councils of the CIOT and the ATT. To enhance the independence of the disciplinary process, the ATT and CIOT no longer have any role in the handling of cases.

In processing complaints, the TDB seeks to ensure that its procedures are fair to all the parties involved and operate efficiently, proportionately and transparently. The TDB's jurisdiction over members of the ATT and the CIOT is confined to disciplinary matters, and conciliation has therefore been removed from the Scheme. Complainants are advised by the TDB that making a complaint against a member is not a substitute for seeking damages or other redress through the courts. The TDB does not offer legal advice, intervene in fee disputes or advise on what is a reasonable sum for work done.

## **The new disciplinary process**

### **1 The review stage**

The procedures set out in the new 2008 Scheme and accompanying Regulations build upon the processes developed under the previous Scheme. The initial handling of complaints remains a function of a TDB staff member, known as the Reviewer, who processes correspondence from the complainant and ensures that the member has every opportunity to respond to the allegations made by the complainant. The Reviewer may reject complaints that appear to be trivial, vexatious, more than a year old or outside the jurisdiction of the Scheme. But the complainant may appeal against such a decision to an independent Investigatory Assessor, who will decide if the case should continue.

If the complaint involves a breach of the participants' administrative rules, such as failure to meet the CPD requirements, there is provision for the Reviewer to impose a Fixed Penalty. But a member may object and request a hearing by a Disciplinary Tribunal (although if the charges are proved, additional costs are also likely to be imposed). This is similar to the Fixed Penalty arrangements that apply in the Magistrates Courts.

### **2. The Investigation Committee**

As under the previous Scheme, most cases will start with an Investigation Committee consideration as to whether there is a prima facie case to answer. The Investigation Committee comprises up to five members, with a majority of lay members and at least one professional member. These members are drawn from a larger Investigation Panel appointed by the TDB.

The Investigation Committee considers all cases referred to it on the basis of a dossier of written submissions from the complainant and the member. If it decides that a prima facie case has not been made out or that the case is not serious or that there is unlikely to be evidence to substantiate it before a Disciplinary Tribunal, it may conclude that the case should go no further. The Committee must give reasons for its decision and these are sent to both the complainant and the member. Either party may appeal against such a decision to an Investigatory Assessor appointed by the TDB, who may reject the appeal or require a new Investigation Committee to reconsider the complaint.

All other prima facie cases will be referred to a Disciplinary Tribunal. The Investigation Committee no longer has the power to award minor sanctions without a hearing, but with the member's consent. Thus all significant complaints will be heard by a Disciplinary Tribunal.

### **3. The Disciplinary Tribunal**

The Disciplinary Tribunal comprises three members selected from a separate Disciplinary Panel appointed by the TDB. The majority of members of the Panel are not members of the ATT or the CIOT. Each Tribunal will include a legally-qualified chairman, a lay person and a member of either the ATT or the CIOT. Its function is to hear evidence submitted by the Presenter of the case (who is appointed by the TDB to prepare the charges and present the case) and from the member (or his/her representative) and to listen to any

witnesses. The member is not obliged to attend, although it is advisable for him/her to do so. But the member is required to cooperate with, and respond to correspondence from, the TDB.

At a Disciplinary Tribunal the standard of proof is the civil standard and if the allegations are found proven, the Tribunal has a wide range of sanctions, which include an order to apologise, a warning as to future conduct, a fine, suspension or expulsion from the body of which the defendant is a member. When the allegations are found proved, the Tribunal will normally award costs against a defendant and order that its finding be published in Tax Adviser and on the TDB's website. In cases of inadequate professional service there is a new power to award compensation where the complainant can demonstrate a quantifiable material loss, up to a maximum of £5,000.

### **4. The Appeal Tribunal**

Following a finding by a Disciplinary Tribunal, both the member and the TDB may seek to appeal. Appeals are permitted only on specified grounds. An independent Disciplinary Assessor will be appointed by the TDB from the Disciplinary Panel to determine whether the grounds of appeal meet the criteria. If they do, the case will go to an Appeal Tribunal, which has a similar composition to a Disciplinary Tribunal. The Appeal Tribunal may uphold, reject or vary any order made by a Disciplinary Tribunal. Its decision is the final stage in the TDB's procedures.































