

**TAXATION
DISCIPLINARY
BOARD**

**INDICATIVE SANCTIONS
GUIDANCE**

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The Taxation Disciplinary Board,
PO Box 544,
Pinner,
Middx HA5 9EY

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SECTION 1: INTRODUCTION

This Indicative Sanctions Guidance has been issued by the Taxation Disciplinary Board after consultation with members of the Disciplinary Panel, who are appointed to sit on the Board's Disciplinary and Appeal Tribunals, and members of the Professional Standards Committee of the Chartered Institute of Taxation and the Association of Taxation Technicians.

The Guidance is to be used by the Disciplinary and Appeal Tribunals when they are considering which sanction to impose upon an individual or firm against whom a finding has been made. It is a 'living document' which will be updated and revised when the need arises.

The Guidance is intended to produce a structured approach to decisions about the sanctions to be imposed once a finding has been made against a member.

It is important that sanctions should be consistent and proportionate. It is also important that a member, student or firm knows, prior to any decision being made, which sanctions are available to the Tribunal and which matters the Tribunal members may take into account when coming to a decision.

Each case will be judged on its own facts. Members of the Tribunal must exercise their own judgement in making decisions, whilst having regard at all times to the Taxation Disciplinary Scheme Regulations and any other relevant guidance issued by the Board, including this Indicative Sanctions Guidance.

The range of sanctions that is available to a Disciplinary or Appeal Tribunal is set out in Regulation 15.6, which is reproduced at Annex A.

SECTION 2: PURPOSE OF SANCTIONS

Like other professional disciplinary bodies, the TDB aims to operate in the public interest. It therefore seeks to apply the following key principles in disciplining professional members:

- a) protecting the public
- b) upholding the proper standards of conduct in the profession
- c) maintaining the reputation of the profession

The purpose of imposing a sanction upon a member is not simply to discipline the individual or firm for any wrongdoing of which he or it may be culpable, but to protect the public and maintain the reputation of the profession by sending a signal as to how serious the Tribunal judges the conduct to be. 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

In considering whether a member may have fallen short of the required standards, the TDB pays particular regard to the Professional Rules and Practice Guidelines promulgated by the ATT and the CIOT and published on their websites. Most charges brought against a member before a Disciplinary Tribunal will allege a breach of one or more of the Professional Rules.

The CIOT and ATT are in the process of reissuing their Professional Rules and Practice Guidelines, with the inclusion of the 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

Proportionality

In deciding what sanction is appropriate in any individual case, the Tribunal needs to weigh the interests of the member or student against the need for public protection. The Tribunal must have regard to the public interest. As noted above, this includes the protection of members of the public, maintaining public confidence in the profession and upholding proper standards of conduct.

In order to ensure that any sanction imposed is proportionate to the level of seriousness of the conduct 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 purpose.

For each type of complaint, there is a suggested starting point. The starting point is not 'the going rate' for that particular complaint. It simply indicates where a Tribunal might start when it looks at all the factors which are relevant to deciding the penalty. Once the Tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding to reduce or increase the penalty, if appropriate. For each category of complaint, there are examples of mitigating and aggravating factors.

SECTION 3: DESCRIPTION OF THE SANCTIONS AVAILABLE

In this section, reference to a member includes reference to students, affiliates and firms where indicated.

The Tribunal will normally impose a single sanction for each finding made against a member. But it does have the power to impose more than one penalty for the same offence. A fine may be imposed in addition to an order for some other sanction in appropriate circumstances, for example, where the defendant has clearly benefited financially as a result of the misconduct.

The Tribunal may make any one or more of the following orders.

No further action

In all cases, the Tribunal may decide that the appropriate 'sanction' 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 there would be no purpose served by ordering sanctions.

Order to rest on file

This sanction is appropriate when a Tribunal finds the case proved, but the misconduct is regarded as minor and unlikely to be repeated. Provided that there is no risk to the public and the conduct appears to have been an isolated incident, the Tribunal may order the matter to rest on file for a limited 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 a Disciplinary Tribunal. If the Tribunal then finds the member guilty of the more recent charges, it should take account of the previous case in considering an appropriate sanction.

Warning

This is one of the least serious sanctions that can be applied by the Tribunal. A warning may be appropriate where the conduct is at the lower end of the spectrum, 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) conduct was an isolated incident, not deliberate
- d) genuine expression of regret
- e) previous good history
- f) no repetition of such conduct since the incident.

Where such factors are lacking, a censure would be more appropriate.

Order an apology

In cases where a client or a member of the public has been adversely affected by the conduct 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 bound 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 his client in some way. If the Tribunal considers that an apology is appropriate, it should make it clear what aspects of the member's conduct are to be covered by the apology. The Tribunal may order that the apology should be approved in draft by the Chairman or by some other designated person before it is sent.

Censure

A censure is appropriate where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Tribunal that there is no continuing risk to the public, and there is evidence of the member's understanding and appreciation of the conduct which has been found proved. A censure will be appropriate where a Tribunal considers that the misconduct is unlikely to be repeated in the future.

Suspension of membership

Suspension of membership may be appropriate when the conduct is sufficiently serious to warrant expulsion, but not so serious as to require permanent expulsion. For example, the Tribunal may consider that there is no risk of a recurrence of the misconduct or that 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 resume his membership.

Expulsion

Expulsion is the most serious sanction available. It will be appropriate where this is the only means of protecting the public and/or the conduct 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

Imposition of conditions on the member

This sanction allows the member to continue to practise as a professional member, but with certain restrictions. The imposition of conditions allows the practitioner to remedy any deficiencies in his practice whilst at the same time protecting clients. For example, a member may be prohibited from holding client monies as a condition of retaining his membership. Any conditions must be:

- appropriate;
- proportionate;
- workable;
- time-limited; and
- measurable.

It will be fairly unusual for a Tribunal to use this particular sanction because of the limited scope for ensuring that any conditions can be supervised and enforced. The principle of proportionality requires that any conditions imposed should be the minimum necessary to protect the public.

Relevant factors to take into consideration (this list is not exhaustive) include:

- a) identifiable area of practice in need of review/retraining
- b) evidence of potential and willingness to respond positively to future training
- c) clients not at risk as a result of continued registration with conditions
- d) conditions will protect clients during the period they are in force

Fine

The Tribunal may impose a fine as the only sanction, or combine a fine with an additional sanction. For example, the Tribunal may feel that a particular sanction is appropriate, but that it should be combined with a fine to reflect properly the seriousness with which it views the conduct. Or a fine may be appropriate where a higher sanction was almost imposed; for example, a near exclusion might end up as a censure plus a large fine. In other cases, the fine may reflect the amount by which the member has profited from the breach. For example, if a member has been carrying on public practice without professional indemnity insurance for a period, one element of the fine might reflect the cost of the insurance premiums he ought to have paid throughout the period. The imposition of the maximum available fine should be reserved for the most serious misconduct that would be reasonably likely to occur.

Once the Tribunal has decided the appropriate amount of a fine, it may be reduced after taking into account 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 his financial circumstances, a Tribunal is entitled to assume that he can pay whatever fine is ordered.

Compensation

Where a charge of Inadequate Professional Service has been found proved, the Tribunal may order the member to pay compensation to the complainant to reflect any financial loss suffered as a result of the member's or firm's failure to observe proper standards. Compensation is limited to a maximum of £5,000 and is intended to reflect any actual quantifiable loss which the complainant can show he has sustained, after taking account of any other avenues for redress available to the complainant (eg. if another accountant had to be employed to rectify the member's errors). The availability of compensation is governed by the provisions of Regulation 20.

Recommendation of removal from a register

This sanction will arise fairly infrequently. It is intended to deal with a situation 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. For example, registration with either body for the purpose of Anti-Money Laundering (AML) supervision requires compliance with a number of statutory conditions. Failure to comply with those requirements may warrant removal from the relevant AML register maintained by the Institute or Association, in which case if the member or firm wishes to remain in practice it would have to register with HMRC or some other professional supervisory body. As the various registers are maintained by the ATT and CIOT, who have statutory powers in relation to AML compliance, the Tribunal can only recommend removal; it cannot order the removal of the member or firm.

Other sanctions for students or other regulated persons

The Tribunal may order that a student or a person regulated with one of the member bodies is not granted membership status for a specified period, notwithstanding that he 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 he should not be permitted to sit examinations for a period of time.

Costs

An order for costs is not a sanction, but 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 Board has issued separate guidance on the award of costs.

Publicity

Publication of a Tribunal decision is automatic where an allegation has been found proved, unless no further action was ordered or the Tribunal has good reason to order that the defendant should not be named. Publicity is not a sanction, but it is mentioned here for completeness. The Board has issued separate guidance on the publication of Tribunal decisions.

SECTION 4: CATEGORIES OF COMPLAINTS

CRIMINAL CONVICTIONS AND FINDINGS BY OTHER DISCIPLINARY BODIES RELATING TO PROFESSIONAL WORK

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

Any other offence committed in a professional capacity even though not followed by a prison sentence.

Adverse findings by other regulatory bodies where the underlying conduct involves dishonesty.

Any other offence followed by a prison sentence (suspended or not) or Community penalty.

GUIDELINE: EXCLUSION

An offence not committed in a professional capacity or followed by a prison sentence.

GUIDELINE: REPRIMAND

The Tribunal may also consider other sanctions available to it.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

Aggravating factors

- Fraud
- Amount involved
- Defendant in a position of trust (eg as an employee)
- Direct involvement in dishonesty, planned and calculated

Mitigating factors

- Offence not committed in a professional capacity.
- No issue of integrity arises
- Admission of guilt; insight into wrong doing; co-operation with prosecution authorities; restitution to victim.

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).

CRIMINAL CONVICTIONS UNRELATED TO PROFESSIONAL WORK

Conduct which resulted in a conviction but arose in a member's private life, as opposed to his 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 has to deal with the complaint because the member is in breach of the disciplinary 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 the good reputation of the profession against the need to impose a further penalty and its consequential impact on the ability of the member to practise his profession.

When considering its decision on whether to impose a penalty and if so what, the Tribunal should take into account the following considerations:

- Whether the offence and conviction affects the member's professional work or his ability to practice as a tax adviser in the future (eg risk of harm to clients, need to protect public, soundness of member's judgment).
- Whether the offence and conviction of the member diminish the reputation of, or the public's confidence in, the Institute, the Association or the profession.
- 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.

COMPETENCE

Repeated seriously defective work

GUIDELINE: EXPULSION

Work of a seriously defective standard
Lesser forms of poor accounting or tax work.

GUIDELINE: CENSURE

The Tribunal may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

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

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).

FAILURE TO TAKE DUE CARE

Defective accountancy work (eg poor quality, late filing, not in statutory format, 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 charges are fair in relation to work performed for client

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

The Tribunal may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

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
- Client promptly recompensed for any loss
- Had taken professional advice
- Client unhelpful in providing accounts or gave insufficient or misleading information
- Evidence of lack of co-operation by client
- Loss of files due to external factors (fire, flood, etc)

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).

INADEQUATE PROFESSIONAL SERVICE

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

GUIDELINE: CENSURE and, if appropriate, COMPENSATION

IPS is intended to deal with cases where the member has provided poor service towards the client and this falls short of the kind of service which is expected of a professional tax adviser. Where the client can demonstrate a tangible loss as a result of the IPS, the Tribunal may order the member to compensate the client up to a maximum of £5,000.

The Tribunal may also consider other sanctions available to it, for example by ordering the defendant to apologise to his client or fining the member in addition to or instead of another sanction.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

Aggravating factors

- Significant effect on client
- Vulnerability of client
- Motivation of financial gain

Mitigating factors

- Immediate apology
- Early remedial action

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).

CLIENT MONIES

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

The Tribunal may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

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

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).

ETHICAL CONDUCT

Deceiving/misleading TDB or a statutory regulator
Failing to act with integrity
Serious lack of objectivity/ independence or conflict of interest
Providing false or misleading information
Misuse of confidential information

GUIDELINE: EXPULSION

Less serious lack of objectivity/independence or conflict of interest
Breach of confidentiality
Unprofessional behaviour (eg lack of courtesy and consideration)

GUIDELINE: CENSURE

The Tribunal may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

Aggravating factors

- High public importance
- Deliberate/reckless
- 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

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).

OTHER LIABILITIES AND BREACHES OF BYE-LAWS OR REGULATIONS

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 PII

GUIDELINE: EXPULSION

Being subject to an insolvency process other than bankruptcy
Failure to inform ATT or CIOT of criminal proceedings or disciplinary action by another regulatory body
Failure to comply with CPD requirements
Failing to provide professional clearance or transfer information
Breach of AML regulations (not involving criminal activity or dishonesty)

GUIDELINE: CENSURE

Minor breaches of the administrative requirements of the ATT and CIOT will often be dealt with under the TDB's financial penalty arrangements. The Disciplinary Tribunal is therefore likely to see only those cases where the member has failed to accept a financial penalty or the matters in question are sufficiently serious to require a more severe sanction. Where a member has been disciplined by another regulatory body, the Tribunal may have regard to the sanction imposed by the other body.

Aggravating factors

- Period of time involved
- Deliberate or reckless disregard of order or regulations

Mitigating factors

- Steps swiftly taken to rectify breach

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).

PERSONAL CONDUCT

Acting in such a way as to bring himself, the ATT, the CIOT or the tax profession into disrepute

Conduct unbecoming

GUIDELINE: CENSURE

The Tribunal may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

Aggravating factors

- High public importance
- Deliberate/reckless
- Position of trust held

Mitigating factors

- No loss suffered
- Action taken at request of client or employer

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).

STUDENT ISSUES

Misconduct relating to examinations, such as:

Impersonation of another student

Obtaining improper assistance from another person

Plagiarism

Unauthorised materials in the possession of the student with intention to cheat

Student holding out as CIOT or ATT Member

Failing to comply with instructions from invigilator

GUIDELINE: REMOVAL FROM REGISTER

The Tribunal may also consider other sanctions available to it.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts.

The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline.

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

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).

THE TAXATION DISCIPLINARY SCHEME REGULATIONS 2010:

**REGULATION 15.6:
SANCTIONS AVAILABLE TO THE DISCIPLINARY TRIBUNAL**

- 15.6 If the Disciplinary Tribunal finds that the Charge has been proved wholly or in part, the following provisions shall apply:
- (a) the Presenter shall inform the Disciplinary Tribunal of any previous cases in which the Investigation Committee found a Prima Facie Case against the Member but ruled that no action should be taken;
 - (b) the Presenter shall inform the Disciplinary Tribunal of any previous disciplinary findings made against the Defendant by the Disciplinary Tribunal, the Appeal Tribunal or any predecessor of those two tribunals and of any orders made;
 - (c) the Defendant or his representative shall be allowed to address the Disciplinary Tribunal in mitigation;
 - (d) the Disciplinary Tribunal must take into consideration any previous cases where a Prima Facie Case was found but no action was taken against the Defendant, the past disciplinary record (if any) of the Defendant, the Disciplinary Tribunal's view as to the nature and gravity of the charges (so far as they are proved) and any other circumstances the Disciplinary Tribunal considers to be relevant. The Tribunal shall also take into account the Indicative Sanctions Guidance issued by the Board.
 - (e) The Disciplinary Tribunal may:
 - i) order the Complaint to rest on file for three years
 - ii) require the Defendant to apologise to the Complainant or another party
 - iii) warn the Defendant as to his future conduct
 - iv) censure the Defendant
 - v) fine the Defendant a sum not exceeding £20,000 for each proven Charge
 - vi) suspend the Defendant from membership of any Participant. Such suspension may be for a fixed period of no less than one month to a maximum period of two years
 - vii) expel the Defendant from membership of any Participant
 - viii) order the Defendant to pay a sum or sums as compensation to a limit of £5,000
 - ix) impose conditions on the Defendant
 - x) recommend the suspension or removal of the Defendant from any register maintained by the Participants
 - xi) impose such other sanctions as are appropriate to students, associates or any other persons or bodies subject to the jurisdiction of the Participants
 - xii) order the Defendant to pay a sum by way of costs.
 - (f) In awarding costs as above under Regulation 15.6(e)(xii), the Disciplinary Tribunal must have regard to any relevant guidance issued by the Board.