

**TAXATION
DISCIPLINARY
BOARD**

ANNUAL REPORT

and

ACCOUNTS

2008

THE TAXATION DISCIPLINARY BOARD 2008

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 Tribunal

Peter Douglas FCA

Auditors

Hillier Hopkins LLP,
Chartered Accountants and Registered Auditor,
64 Clarendon Road,
Watford,
Hertfordshire WD17 1DA

Registered address

Artillery House,
11--19 Artillery Row,
London SW1P 1RT

Registered as a Company limited by Guarantee
No. 4210063

Address for Correspondence

PO Box 544,
Pinner,
Middlesex HA5 9EY

Telephone and fax: 020 8868 9717

Website: www.tax-board.org.uk

CONTENTS

Chairman's Report	Page 4
Aims and Objectives of the TDB	Page 10
Executive Director's Report	Page 11
Timescales for Handling Complaints	Page 13
Cases handled in 2008	Page 14
Panel Membership	Page 20
Guidance for Panels	Page 22
Financial Information and Accounts	Page 24
Annex: The Taxation Disciplinary Scheme 2008	Page 31

CHAIRMAN'S REPORT

Introduction

This is the second Annual Report in the current new format. My second term as Chairman of the Taxation Disciplinary Board (TDB) will end in September 2009, so this will be my last Annual Report. I am therefore taking the opportunity to review the changes to the Taxation Disciplinary Scheme (TDS) during the two terms of my Chairmanship and identify the challenges for the Board under the leadership of my successor.

When the TDS was established in 2001, the Scheme represented a leading edge approach in disciplinary matters. The two taxation bodies that founded the TDB - the Chartered Institute for Taxation (CIOT) and the Association of Tax Technicians (ATT)- were ahead of other professional bodies in recognising the need to have a Disciplinary Scheme that was independent of their representative activities. The Scheme then established was a large step forward in ensuring that the public could have confidence in the way in which the taxation profession handled complaints against their members and that complaints were considered fairly and effectively by an independent body.

When I was appointed initially in 2004 it was clear that whilst the original Taxation Disciplinary Scheme had served the profession and the public interest well, professional regulation had moved on apace. The Board therefore agreed to undertake a review of the original Scheme to assess how far it was "fit for purpose" and complied with best regulatory practice. The result was the new Taxation Disciplinary Scheme 2008 that came into effect in January 2008 with appropriate transitional arrangements for complaints received before that date.

The effects of modernisation

The TDS 2008 is a significant modernisation of the original TDS. The main change which enhances the overall efficiency and effectiveness of the TDB operations flows from a major structural change in the arrangements.

The original TDS included much of the detailed arrangements governing the Scheme. Even small operational changes required the agreement of both Councils of the ATT and the CIOT. This was a long and protracted process. Some desirable changes requested by the TDB, such as the inclusion in the Scheme of firms of Chartered Tax Advisers, were never approved. Thus until the TDS 2008, such firms were outside the disciplinary arrangements. This led to considerable problems in at least one case.

The new TDS provides an enabling framework for the Scheme so that day to day operational matters are governed by Regulations made by the TDB under the TDS 2008 and do not require the approval of the two Councils. The Board can therefore readily make changes to the Regulations to reflect practical experience of the operation of the Scheme. We have already found a number of small changes that need to be made to the way in which the Scheme operates, and an early task for my successor will be to implement the amended Regulations.

Last year's Annual Report outlined at length the changes brought about by the new Scheme and some that the Board introduced more generally to enhance the operation of the system. It is worth briefly reviewing the formal changes flowing directly from the new TDS.

Changes flowing from the Taxation Disciplinary Scheme 2008

1. Conciliation: The original TDS included a provision for conciliation before the disciplinary process started. However, conciliation was not attempted if the Chairman of the TDB Investigation Committee thought it was not appropriate. In practice most complaints went through attempted conciliation before being referred to the Investigation Committee to consider if there was a case to answer against the member.

Whilst the Board recognised the value of conciliation in addressing and resolving complaints from the public, it nevertheless believed that the outcome of the conciliation often masked the underlying breaches in professional standards. These had to be addressed in order to protect the public, maintain confidence in the taxation profession and promote and maintain professional standards and conduct.

The Board therefore decided to remove conciliation from the ambit of the TDS. Unless a complaint is trivial, vexatious or out of time (and without major public interest), it is referred directly to the Investigation Committee (IC) to consider whether there is a case to which the ATT or CIOT Member must answer. If a complaint is not referred to the IC, then it may be passed to the ATT or CIOT to see whether the complaint can be resolved by conciliation. Three complaints were successfully conciliated in 2008. If serious issues arise during the conciliation process that had not been apparent earlier, then the complaint may be referred back to the TDB for further consideration.

2. Improving complainants' satisfaction: The original TDS was not very complainant friendly. If a complaint was not referred to the IC or if the IC decided that there was no case to answer, there was nothing further that the complainant could do. This contrasted

with the provisions for complaints against lawyers, where dissatisfied complainants may ask for their case to be reviewed by the Legal Services Commissioner. Originally at the TDB, there was no-one to whom the complainant could turn.

The TDS 2008 now provides that if they so wish, dissatisfied complainants may have their "rejected complaint" reviewed by an independent member of the Investigation Panel who had no previous involvement with the complaint. This is an important safeguard for consumers and promotes confidence in the fairness of the new Scheme. The Investigation Committee also now gives reasons for all its decisions, so complainants understand how their complaint has been considered.

3. Coverage of the TDS: In addition to covering members and students of the ATT and CIOT, the Scheme now covers all firms and companies that are regulated by the two bodies. This means that customers of those firms which have Chartered Tax Adviser status or are otherwise regulated by the ATT and CIOT have an avenue for any complaints that may arise. It also means that firms which have a director or partner who is a member of the CIOT or ATT and have chosen to have their compliance with anti-money laundering regulations overseen by the CIOT or ATT, rather than by HM Revenue and Customs, also now come within the jurisdiction of the TDB. However, there remain some operational issues in this area that my successor will need to resolve with the CIOT and ATT.

4. Streamlined handling of minor administrative breaches: Sadly every year there are a number of ATT and CIOT members who breach professional standards by failing to undertake the necessary CPD in order to maintain their professional skills. Under the original TDS, these breaches required the involvement of the Investigation Committee and then a possible agreed sanction. A single incidence of such a

breach may not be a serious problem, and full involvement of the IC to consider an undisputed breach was disproportionate. Under the new Scheme, first and second time breaches for administrative failings are dealt with by the sanction of a fixed penalty. If the member objects, he can have his case heard by a Disciplinary Tribunal. Most members understandably prefer the speed of the fixed penalty. But if a member persists in failing to do the necessary CPD, his case would not be handled administratively, but would go through all the normal processes.

5. Abolishing consent orders: Under the original Scheme if the IC judged there to be an answerable case of misconduct, but the matter was relatively minor, it was possible, if the member agreed, for the IC to propose a relatively minor sanction (such as an admonishment) instead of referring the matter to the Disciplinary Committee. This consent order avoided the formality of an open hearing, but it meant that the member did not have an opportunity to argue his case. It also mixed up the investigative function of the IC, which had to consider whether there was an arguable case to answer, with the Disciplinary Committee's function of weighing up the evidence and deciding if the charges were proved. The TDS 2008 has demarcated this distinction clearly and the IC no longer has the power to offer a consent order. Thus members no longer have to decide whether to "give up" or "fight" an allegation of misconduct. Unless the allegations are very minor, the matter will be heard by a Disciplinary Tribunal; and the member will have a full opportunity to present his case.

Other changes introduced

The Board has been very conscious of the need to ensure that members of the ATT and CIOT pay no more for their Disciplinary Scheme than is absolutely necessary. We have sought to deliver a more efficient and effective Disciplinary Scheme as well as seeking to ensure that

the arrangements are fair to all parties, inspire public confidence and promote the high professional standards of the ATT and CIOT. We have therefore taken a number of initiatives to deliver better Value for Money and improve the quality of decision making and independence of the Scheme.

1. Enhanced efficiency: Under the original Scheme the Investigation Committee always met as a full Committee. Thus all 12 members were summoned to each meeting and contributed to the consideration of all the cases. This inevitably meant increased time to consider each case and additional expense in paying the fees and travel expenses of all Committee members for every meeting. The Board is committed to enhancing efficiency whilst still maintaining the careful and fair consideration of every complaint. The TDS 2008 now provides for panels of members of the IC to consider the cases. In most cases the panels comprise five IC members, always with a member of the profession, but also always with a lay majority to ensure the independence of the decisions.

2. Recovery of costs : Both the original Scheme and the TDS 2008 allow for the Disciplinary and Appeal Tribunals to levy costs on the Member against whom the charges have been proved. In the past there has not been a consistent approach to this, with the result that not all members against whom sanctions were levied were also paying the costs. The Board believes firmly in a "polluter pays" policy in order to minimise the costs of the overall Scheme to the ATT and CIOT. So we have issued guidance to the Tribunals, and costs are now routinely levied when charges have been proved. We have also taken a firm line with both costs and financial penalties. Unless they are paid promptly, the TDB will take action through the Courts to enforce the debt.

3. Independence from the ATT and CIOT: The original Scheme was intended to be demonstrably independent of the ATT and CIOT in order to provide members of the public with the reassurance that any complaints would be fairly handled. Today independence is the mantra of professional regulation. Most professions have now followed the lead of the ATT and CIOT and enshrined independence in their disciplinary or fitness to practise arrangements. Indeed almost the first act of the new Legal Services Board has been to issue a consultation document about the need to entrench the independence of regulators in the legal sector from their representative arms. At the TDB we have already taken a number of further steps to promote independence, although there remain a number of challenges for my successor to tackle.

4. TDB Staffing: Until 2007 the Scheme was run on a day to day basis by staff employed by the ATT or CIOT. We owe a considerable debt to Andy Pickering who acted as Secretary to the TDB and also to Phillip Pearson and Jonathan Crump who ran the Investigation and Disciplinary Committees respectively. However, to ensure that there is full independence from the ATT and CIOT it is important that the TDB has its own staff. We have recruited our own Executive Director, Neville Nagler, in accordance with best practice by an open and fair competition; and we have also hired a part time member of staff to assist Neville Nagler. There is no longer any involvement by ATT or CIOT staff in running the TDB.

5. Presenting the cases at Disciplinary Tribunal: Under the original Scheme, once the Investigation Committee had decided that there was a case to answer by a member, the ATT or CIOT were responsible for taking forward that case against its member at the Disciplinary Committee. This meant that the ATT or CIOT chose the barrister to present the

case and approved the charges that were presented. In order to improve independence, the cases are no longer handled by the ATT or CIOT. The TDB instructs the barristers and the charges are prepared on the basis of the recorded decisions of the Investigation Committee.

6. Members of the Investigation and Disciplinary Panels: The first members of these two panels were a mixture of lay and professional members, many of whom were serving on the predecessor committees at the ATT and CIOT. They gave sterling service to the TDB and ensured that right from the start in 2001 the cases were considered fairly and expeditiously. As their terms of office have ended the Board has found replacement members- both lay and professional- by advertising and following best recruitment practice with an open competition. We now have a diversified panel membership with many members having significant experience in professional disciplinary work/ regulation.

7. Training for Panel members: Another innovation that we have introduced in the last two years is to hold regular training sessions for panel members led by a solicitor who is a specialist in professional regulation. Induction training is mandatory and no member is allowed to sit on a panel until they have satisfactorily completed initial training. Annual update sessions are provided for all panel members to ensure that they are informed of all the latest developments and relevant Court judgments.

8. Financial independence: Until 2007 the CIOT handled all the monies allocated to the TDB and kept all the financial records which were audited by the ATT's and CIOT's own auditors. Today, the TDB manages its own financial affairs and runs its own separate bank account. We are independently audited by our own (different) auditors who charge a lower fee than that proposed by the ATT/CIOT's auditors. Each year the TDB

provides the ATT and CIOT with its estimated financial requirements and negotiates a grant from the two organisations. This gives us some independence, but at present we are restricted to working solely from year to year with no ability to carry over reserves from one year to the next. This impinges on our ability to run the TDB as efficiently as we might and is something that the incoming Chairman may wish to address under the general umbrella of ensuring that the TDB is properly independent of the ATT and CIOT.

Challenges for the incoming Chairman of the TDB

1. Independence: The Board has already done much to entrench its independence from the representative side of the taxation profession. However, in recent months the newly established Legal Services Board has set out clearly how it believes the governance arrangements of a regulator must underpin its independence. This covers such matters as ensuring that the representative arms have no control or undue influence over:

- a. the appointments, appraisal, renewal and termination of the members of the Board and those responsible for exercising disciplinary functions. This is a critical area for regulatory independence
- b. the resources and staffing of the TDB
- c. the setting (and amending) of the TDB's own rules and procedures in connection with the exercise of its disciplinary functions.

It will be apparent from some of my earlier remarks that this is an area where the new Chairman and the Board will need to work closely with the ATT and CIOT to ensure that the arrangements applying to the TDB meet these new standards of independence. There is a need to ensure that all Board

appointments are and are seen to be independent of the ATT and CIOT. A start has been made with the advertisement for my successor.

2. Monitoring and supervisory arrangements: Until now there have been rather informal monitoring arrangements. I have attended periodic meetings of the Councils of the ATT and CIOT but other than the Annual Report, there has been no regular provision of information about the TDB's performance and other issues. I believe that needs to change, not least because with greater independence comes the need for the ATT and CIOT to have adequate assurance that the TDB is operating to acceptable standards. I have commenced discussions with the ATT and CIOT about the need for regular reports. This should provide the basic groundwork on which the new Chairman can build.

3. Finishing the implementation of the TDS 2008: The Board has always been aware that it would take some time to implement a new Scheme. I have already referred to a number of improvements. The Board has reviewed the operation of the new Scheme in its first year. After consulting with members of the Panels we have prepared a number of amendments to the Regulations which will be made before the end of 2009. There remain three rather larger challenges for the new Chairman to drive forward.

4. Indicative Sanctions Guidance: In order to ensure that Disciplinary and Appeal Tribunals are consistent in the sanctions they impose, the Board plans to issue Indicative Sanctions Guidance for the Tribunals. This requires a lot of work collating sanctions precedents and considering appropriate sanctions for different breaches of the Professional Rules and Practice Guidelines. This is important work because Indicative Sanctions Guidance sends out clear messages to the public, the profession and other stakeholders such as HM Revenue

and Customs about the standards required of taxation professionals and what the consequences are if those standards are not met or maintained.

5. Interim Order Powers: At present the TDS 2008 does not permit the TDB to take any interim action to protect the public where a member is alleged to have been dishonest or committed a criminal offence. This means that until such time as the case is decided by the Disciplinary or Appeal Tribunal a member facing serious charges is free to continue to practice using the ATT or CIOT designation. Members of the public using their services or relying on their integrity may have no protection. This contrasts with the arrangements in other professions, such as opticians, doctors and chiropractors, where Interim Orders may be made restricting or preventing the practice of the person facing serious charges. One such case has already arisen at the TDB and the Board will need to consider carefully the best way to balance the needs of members to continue earning a living with the legitimate requirement to protect the public.

6. Regulation of firms: There are arrangements for firms and companies to become members of the ATT and CIOT and use the relevant designatory title and membership badge. Firms may also register with the CIOT and ATT for anti-money laundering purposes. However, at present the rules governing firm and corporate membership in relation to the TDB differ from those applicable to individual members of the ATT and CIOT. This has caused some problems recently where complainants have been left with no recourse to the TDB in respect of their complaint. The Board takes the view that this is principally a matter for the ATT and CIOT to address, but we will work closely with the two organisations to ensure that firms and companies are appropriately regulated.

7. Other professional taxation organisations: When the ATT and CIOT established the TDB provision was made in its Articles of Association for other professional taxation bodies to participate in the arrangements. That was at a time when no formal regulation was required of bodies whose members advised and acted for tax payers. With increased emphasis on protecting the public, we are entering an era where independent professional regulation is expected. A start has been made with Money Laundering regulation where an independent disciplinary function is a requirement. Because of the expense of running an independent disciplinary scheme, there is also a trend towards organisations working together and “sharing” adjudication arrangements. The health professions are working towards an independent Office of the Health Professions Adjudicator. It would therefore be an opportune time for the various professional taxation bodies to consider sharing the disciplinary resources of the TDB. I hope that the next Chair will lead the Board in exploring this with other professional taxation bodies so that they can benefit from the expertise of the TDB and its skilled panellists. A start has already been made and I hope that in the near future we may see another tax body join the ATT and CIOT as participants in the TDB.

Conclusion

I believe that the TDB has moved forward purposefully in the last five years. Whilst we are still engaged in implementing and bedding down the new TDS 2008 and there are new challenges facing the Board, I believe that I am handing over to my successor a TDB and the TDS that are largely “fit for purpose”.

I am grateful to the Officers of the ATT and CIOT for the opportunity they have given me to serve the tax profession and for the support in making the changes that were necessary to improve the Scheme.

My thanks go to Andy Pickering, Jonathan Crump and Phillip Pearson, all of whom worked hard for the TDB whilst at the same time shouldering a full workload in their “day jobs” for the ATT or CIOT. In the last two and a half years I have had almost daily contact with Neville Nagler, without whose skills and dedication few of the Board’s achievements would have been realised. Neville has developed an extensive knowledge of professional regulation and I am confident he will ensure a smooth transition when the new Chairman takes up the post.

Finally, it has been a privilege and pleasure to work with my fellow Directors, initially Ronald Ison and Roy Jennings and, latterly, John Clark and Peter Gravestock. I am grateful to them all for their wise advice and consistent support as we addressed the challenges of ensuring that the TDB and the TDS remained in step with best regulatory practice.

Dr VICKI HARRIS
Chairman

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.

EXECUTIVE DIRECTOR'S REPORT

With the implementation of the new Scheme in January, 2008 proved to be another extremely busy year. As the new arrangements bedded down, panel members quickly came to terms with the changes in the way they handled cases. The year saw 38 new complaints, the highest ever number received by the TDB, but most of these could be dealt with in the course of the year. It was also possible to clear some of the long-running cases that dated from the previous year or earlier, and there is every hope that the timescales described at Page 13 of this report can be met on a consistent basis.

Handling complaints

The main focus for my work has involved the processing of complaints and support for the Directors on significant issues of policy. The statistics for the handling of complaints are described later in this report. In my role as Reviewer, I have filtered out very few complaints on the grounds that the issues they raise are trivial. I arranged for three cases to be sent to the CIOT for conciliation, whilst a further two cases seemed suitable for the new Fixed Penalty arrangements. But most cases were fully investigated. Where the complainant is a member of the public, by the time the complaint reaches the Investigation Committee, there will invariably have been several rounds of correspondence. 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, I prepare a case summary for the Investigation Committee to accompany the relevant documents.

As the Secretary to the Investigation Committee, I follow up on all its decisions. In each case the Committee's findings, with the reasons for its

decisions, are sent to the complainant and to the member, whilst the Institute and the Association are also kept informed. Where a case is referred to a Disciplinary Tribunal, I prepare the papers, so that the Secretary to the Tribunal can refer them to one of the team of three presenting barristers in order to prepare the charges. It then becomes the responsibility of Peter Douglas as the Secretary to the Disciplinary Tribunal to oversee the case until the Tribunal has met and delivered its written determination. I then publicise the Tribunal's findings and implement its orders regarding sanctions and costs.

The Board has made it clear that where a member fails to comply with an order to pay a financial penalty or costs, we should have recourse to the civil courts. In one case last year, the registration of our claim quickly prompted the member to pay his costs. In another case, where a member refused to pay a Fixed Penalty order for various administrative breaches, the court claim made in October was still unresolved at the end of the year. It can prove slow and time-consuming to seek to resolve matters by this route.

There have also been difficulties with members who move without informing the CIOT or ATT of their new address. Of the seven members whom the ATT reported last year for failing to submit their CPD returns and for ignoring correspondence, several had changed their addresses without notifying the ATT. As a result, much time was spent in trying to locate these members. In one case, this proved impossible, despite persuading a former employer to forward a letter from the TDB, which was then ignored. It can also prove a problem if correspondence is completely ignored, even though it is a specific disciplinary offence to fail to respond to correspondence from the TDB when so requested. In one case last year a member who had failed to deal with correspondence from a successor adviser

and then ignored letters from the TDB was referred to a Disciplinary Tribunal. In another case, involving allegations of misappropriation of funds, the complainant eventually reported the matter to the police after the TDB had failed to elicit any response from the member.

Policy issues

Much time was spent during the year in drafting guidance on various topics intended to assist panel members and to facilitate a measure of consistency in their decision-making processes. (This work is described more extensively at Pages 22--23 below.). The new arrangements also generated various issues in the course of the year which required advice and consideration. Following our participation at a meeting of the Joint Standards Committee of the CIOT and ATT during April, the Chairman and I undertook to examine what would be a proportionate response to minor complaints which do not raise any issue of misconduct, inadequate professional service or conduct unbecoming a professional person. It was agreed that such complaints would not merit a full TDB investigation, but might be suitable for conciliation. In that event the complaint would be referred to the participants for conciliation, but if the process of conciliation disclosed more serious matters, the case would be referred back to the TDB for further investigation.

TDB Panels and Board

The appointment of new lay members during the summer generated a good deal of work. Apart from advertising in Tax Adviser, we wrote to several other professional regulators inviting them to encourage their lay members to apply. In the event, we received nearly 40 applications from a very strong field of candidates, a dozen of whom were invited for interview. As a result, six new members were appointed with effect from

1 October, whilst a further three were appointed from 1 April 2009. All were able to participate in the Board's induction training held in December. In order to assist panel members, an updated information pack was prepared and provided to panel members for reference.

Part of my role is to follow up on decisions reached by the Directors, whether at Board meetings or less formally. Having met during 2007 on eleven occasions, many of which arose from the legal review, in 2008 the Directors reverted to their more normal pattern of quarterly meetings. One of the major remits last year was the preparation of the Annual Report for 2007, the first such publication produced by the TDB. It was gratifying to find that it attracted some favourable comment, including one professional journal which applauded its cost-effectiveness.

The new Scheme has given the TDB 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. Although the volume of work falling to the Executive Director has again called for rather more than the expected three days a week, I believe that the TDB delivers excellent value for money. Its overall budget and unit costs are modest, particularly when compared with those of other regulatory bodies and the number of members who come within our remit.

Finally, I appreciate all the help I receive from staff at all levels in the ATT and CIOT, and the support provided by my colleague Peter Douglas as Secretary to the Disciplinary Tribunal. And most especially, I have valued enormously the advice and unstinting effort devoted by the Board's three Directors, especially Vicki Harris, the Chairman, with whom I am in virtually daily contact.

NEVILLE NAGLER

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, the Reviewer has to consider whether the complaint falls outside the jurisdiction of the Board; whether it falls outside the prescribed time limits; whether the complaint is trivial or vexatious; and whether the complaint might be amenable to conciliation between the parties. If the complaint concerns a breach of the administrative requirements of one of the participant bodies, the Reviewer may impose a Fixed Penalty order.

Provided the complaint does not fall into one of the above categories, it will be investigated. 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 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 Committee until there is sufficient business to warrant convening a meeting.

Once a case is referred to the Disciplinary Tribunal, the various stages of the process are less easy to timetable than the earlier

processes. The overall timescale depends largely on the member and the presenting barrister, who are responsible for producing most of the documentation required for the Tribunal. There are also timed procedures laid down in the Regulations. 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. If a Disciplinary Assessor decides that there are valid grounds for an appeal, the aim is for an Appeal Tribunal to meet within a month or so of that decision.

The Board has approved several Key Performance Indicators (KPI's), which will provide a basis for monitoring performance. Four KPI's have been agreed, as set out below.

1. The percentage of cases in which the Reviewer determines within 2 months of receipt of the Complaint Form whether the case will go to the Investigation Committee.
2. The percentage of cases in which the Reviewer is unable to determine a referral to the Investigation Committee within 2 months, owing to delays by either the member or the complainant in responding to correspondence from the TDB by the due dates.
3. The percentage of cases which are ready for consideration by an Investigation Committee within 2.5 months of receiving all the requested correspondence from both the complainant and the member.
4. The percentage of cases which are ready to be heard by a Disciplinary Tribunal within 5 months of their being referred by the Investigation Committee or by the Reviewer.

CASES HANDLED IN 2008

Complaints received by TDB

The TDB received 38 new complaints during 2008. This was the highest total for any year since the Scheme started during 2001.

The table below analyses the handling of cases by the TDB in 2007 and 2008.

	Number of Cases	
	2008	2007
Complaints received by Reviewer		
▪ Brought forward from previous year	5	3
▪ New cases in year	<u>38</u>	<u>35</u>
	<u>43</u>	<u>38</u>
▪ Cases withdrawn or not pursued by complainant	15	12
▪ Cases rejected by Reviewer (outside the TDB's jurisdiction)	0	2
▪ Minor cases not involving misconduct *	3	0
▪ Cases where fixed penalty charge ordered	2	0
▪ Cases referred to Investigation Committee	17	19
▪ Cases referred by Reviewer for presentation to Disciplinary Tribunal	1	0
▪ Carried forward to next year	<u>5</u>	<u>5</u>
	<u>43</u>	<u>38</u>
Investigation Committee		
▪ No prima facie case or no action taken	8	7
▪ Prima facie case but no action taken	2	4
▪ Imposition of consent order (no longer applicable under new Scheme)	0	5
▪ Referred for presentation to the Disciplinary Tribunal	6	3
▪ Cases adjourned pending receipt of more information	<u>1</u>	<u>0</u>
	<u>17</u>	<u>19</u>
Disciplinary Tribunal		
▪ Cases awaiting hearing at end of previous year	5	6
▪ New cases referred by the Investigation Committee	6	3
▪ New cases referred directly by the Reviewer	<u>1</u>	<u>0</u>
	<u>12</u>	<u>9</u>
▪ Case dismissed	3	2
▪ Sanction imposed	5	2
▪ Awaiting hearing at end of year	<u>4</u>	<u>5</u>
	<u>12</u>	<u>9</u>

* These cases were referred to the ATT or CIOT and were successfully conciliated.

In 2008, the 38 new complaints were made against 34 professional members, of whom 11 belonged to the ATT, 20 to the CIOT and 3 had dual membership. Three complaints were made against one ATT member, whilst one member reported disciplinary action taken against her by another professional body. One complaint was made against a firm of Chartered Tax Advisers. (Prior to the new Scheme, firms of Chartered Tax Advisers did not come within the jurisdiction of the TDB.) In addition, five cases were brought forward from the previous year, giving a total of 43 cases to process, five of which were carried forward to 2009.

The table below sets out the annual total of complaints received and cases disposed of by both the Investigation Committee and the Disciplinary Tribunal (formerly the Disciplinary Committee). It demonstrates the fluctuations in the volume of complaints received and handled by the TDB over the years.

<u>Year</u>	<u>Complaints received</u>	<u>Cases disposed of</u>
2001 (May—Dec)	4	3
2002	35	23
2003	22	29
2004	26	16
2005	17	25
2006	22	20
2007	35	35
2008	<u>38</u>	<u>38</u>
Total	<u>199</u>	<u>189</u>

Source of complaint

The new complainants in 2008 fell into the following categories:

- 15 were current clients
- 1 was a former client
- 1 was a relative of a client
- 3 were solicitors to a client or former client
- 1 was a tax adviser to a former client
- 1 was a fellow trustee of a client
- 6 were referred by the CIOT on the basis of reports of disciplinary action taken by the Institute of Chartered Accountants in England and Wales;
- 1 was referred by the Association of Chartered Certified Accountants as a result of disciplinary action taken by that body;
- 7 were referred by the ATT for failure to provide CPD returns
- 1 was a former sister-in-law of the member

Grounds for complaint

The 38 new complaints received in 2008 raised in total 58 separate grounds for complaint. These fell into the following categories:

Maladministration	3
Theft	1
False accounting	1
Failing to respond to correspondence in a timely manner	16
Incompetence	9
Conflict of interest	1
Failure to submit CPD record	7
Dishonesty	1
Practising without Professional Indemnity Insurance	3
Criminal conviction	1
Failure to report disciplinary action taken by another professional body	7
Inadequate professional service	6
Failing in duty of care	<u>2</u>
Total number of grounds for complaint	<u>58</u>

Handling of complaints by the Reviewer

A number of cases were withdrawn before they reached the Investigation Committee. No cases were rejected by the Reviewer on the grounds that they fell outside the jurisdiction of the Board; that they were out of time; or that they were trivial or vexatious. Three minor cases, which did not raise any allegations of misconduct, were sent to the CIOT's Conciliation Officer and were successfully conciliated; these cases all arose from the member's failure to return documents and/or to respond to correspondence in a timely fashion. In two other cases the Reviewer imposed a fixed penalty charge: one case involved a failure to notify the CIOT of a disciplinary order made by the ICAEW in a case which raised no tax issues, the other related to a failure to provide the ATT with CPD details when so requested.

In a further seven cases (including two received late in 2007), the complainant decided not to pursue the complaint. In all these cases the complaint was withdrawn before the stage at which it would be sent to the member. Three cases were withdrawn after correspondence had been received from the member. In one case the complaint had been made by a relative of the former husband of the member; the member had no professional relationship with the complainant, who failed to substantiate her allegations when so requested. Another case was withdrawn shortly before it was due to go to the Investigation Committee; as the member had twice rebutted the allegations with substantial evidence and there was no evidence of misconduct, there seemed little purpose in submitting the case to the Committee. In the third case, it was established that the subject of the complaint was not a member of the CIOT but a relative who had the same name and lived at the same address.

The CIOT decided to withdraw one complaint involving a CIOT member who had been the subject of previous

disciplinary proceedings by the TDB. The member had subsequently faced disciplinary proceedings by another professional body, but it was decided that there was no clear evidence of a failure to mention the latter during the TDB proceedings. A further four complaints were withdrawn by the ATT. In two cases the member claimed to have resigned from the ATT prior to the request for his CPD return, whilst a third member was excluded for non-payment of his subscription. In a fourth case, the member had not informed the ATT of her current address, but provided the CPD return once her new address was ascertained. At the end of the year, two CPD cases remained outstanding: in one it was proving impossible to trace the whereabouts of the member, even though his former employer had agreed to forward correspondence from the TDB. In another case, the TDB had pursued the failure to pay a fixed penalty charge through the Small Claims Court: a settlement was awaited at the end of 2008.

The processes for the handling of cases prior to their consideration by the Investigation Committee and the planned timescales are described on Pages 31 and 13 of this Report respectively. Of the seventeen cases which went to the Investigation Committee during the year, the time taken between receipt of the complaint form and the Committee's first consideration of the case broke down as follows:

<u>Time taken</u>	<u>Number of cases</u>	
	<u>2008</u>	<u>2007</u>
1 month	0	5
2 months	5	0
3 months	3	4
4 months	5	3
5 months	2	3
<u>6 months</u>	<u>2</u>	<u>1</u>
Total	<u>17</u>	<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—in one case to 5 months and in the other to 7 months.

The above figures show the total time taken between receipt of the complaint form and its consideration at a meeting of the Investigation Committee. No allowance is made for delays caused by members or complainants in responding to correspondence. The planned timescale shown at Page 13 indicates that 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 5 meetings during the year. It considered 2 cases started in 2007 and 15 cases started in 2008. In one of these cases, a request for further information from the member was outstanding at the end of the year.

Of the 16 cases completed in 2008, the Investigation Committee found no Prima Facie case in 8 cases. The allegations made in these cases ranged from incompetence and inadequate professional service to dishonesty and lack of care. In a further two cases, the Committee considered that there was a Prima Facie case, but that the matters in question were too minor to warrant further action. Both cases involved the member's failure to report to the CIOT disciplinary

proceedings undertaken by the ICAEW on matters unrelated to tax.

The remaining 6 cases considered by the Investigation Committee were regarded as sufficiently serious to be referred to a Disciplinary Tribunal.

In one case, a complainant requested that the Committee's decision that there was no prima facie case should be reviewed by an Investigatory Assessor. However, in the light of related civil court proceedings involving both parties, the TDB acceded to the complainant's request to defer the appeal to the Assessor; the matter remained outstanding at the end of the year.

Disciplinary Tribunal

Three Disciplinary Tribunals were held during 2008. Meeting in panels of three, the Tribunals dealt with four cases brought forward from 2007 and four cases referred in 2008. A further four cases were pending at the end of 2008.

Of the cases heard by the Disciplinary Tribunal, brief details are set out below. The first three of these cases were dealt with under the original Scheme, as the disciplinary process commenced prior to the new Scheme coming into effect. The remaining cases were dealt with under the new Scheme.

- A member of the ATT was charged with failing to act with courtesy and consideration towards the complainant or to exercise proper care in dealing with the complainant's tax affairs. Although the Investigation Committee had found that there was a prima facie case, on the advice of Counsel the ATT presented no evidence against the member, and the Tribunal formally dismissed the case.

- A member of the CIOT faced four charges involving breaches of rules relating to care and conscientiousness, competence, courtesy and the handling of complaints. The Tribunal found that the member had failed to exercise the requisite standards of care and conscientiousness; competence; and courtesy; and that he had failed to respond promptly to correspondence. A charge that the member had improperly exercised a lien over his client's papers was not found proven. The Tribunal ordered that the member be reprimanded in respect of each of the charges found proven; that he pay costs of £2,573, and that the order of the Tribunal be published, but without mentioning the name of the member.
- A member of the CIOT faced two charges relating to a lack of courtesy and consideration and a lack of objectivity. It was alleged that the member had failed to act with consideration towards the complainant and had made an arbitrary allocation of partnership expenses, despite repeated requests for an explanation. Although the Investigation Committee had found that there was a prima facie case, on the advice of Counsel the CIOT presented no evidence against the member, and the Tribunal formally dismissed the case.
- A member of the ATT faced several charges arising from her handling of a business transaction. The Tribunal found that she had failed to manage conflicts of interest inherent in working for both parties to the transaction, failed to establish clear terms of engagement for both parties and failed to ensure that those parties were fully aware of the extent of the conflict of interest. The Tribunal also found that the member had failed to safeguard the confidentiality of her client's interest, by allowing an employee to undertake bookkeeping work for one of the parties although she had an interest in a business that was a competitor of that party. Charges alleging that the member had failed to make adequate disclosure to the parties to the transaction and had allowed her employee to have access to or work on confidential material relating to the transaction were dismissed. The Tribunal ordered that the member be warned of the need to pay close attention to the provisions of the Rules as to conflicts of interest and confidentiality. If on a future occasion the question of acting for both parties to a transaction should arise, she should decline to act for one or both parties unless she could be certain that she could do so without breaching those provisions. The Tribunal ordered that the member should pay costs of £3,376.
- A member of the CIOT was charged with failing to inform the Institute that the Institute of Chartered Accountants in England and Wales (ICAEW) had begun disciplinary action against him; conducting his practice improperly, negligently and incompetently to such an extent as to bring discredit on himself; knowingly or recklessly making a statement which was false or misleading; and failing to uphold the professional standards of the Institute. The Tribunal found that

the Member had failed to report disciplinary proceedings instituted by the ICAEW, but considered that there was inadequate evidence to substantiate the remaining charges. The member was fined £1,000 and ordered to pay costs of £750.

- In the final case, a member of the ATT was the subject of complaints from three separate individuals. In regard to each complaint, the member was charged with performing his professional work inefficiently to such an extent as to be likely to bring discredit to himself and the Association; failing to act with courtesy and consideration towards his clients; providing inadequate professional service to those clients; in one complaint, failing to keep the client adequately informed as to what was happening in his conduct of the client's affairs; and failing to provide information about his conduct which had been requested by the Taxation Disciplinary

Board in relation to a complaint made against him. The Tribunal found that most of the charges were proved and ordered the member to be censured, fined a total of £1,250 and to pay costs of £2,500.

It is intended that the four cases awaiting hearings at the end of 2008 should be heard during the first half of 2009. The allegations against the four members relate to charges of incompetence; failure to respond to correspondence in a timely manner; receiving a sentence of imprisonment in a criminal court; and inadequate professional service.

Appeal Tribunal

As in previous years, no Appeal Tribunal hearings took place in 2008. However, early in 2009 the TDB was granted the right to appeal against a decision taken by a Disciplinary Tribunal regarding the admissibility of evidence. The Appeal Tribunal upheld the appeal and agreed to admit evidence excluded by the Disciplinary Tribunal.

PANEL MEMBERSHIP

Investigation Panel

The Investigation Panel had ten members during most of the year. Five members are selected on a rotating basis to sit as an Investigation Committee, with lay members in the majority. Five meetings of the Committee took place during the year.

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

<u>Name</u>	<u>Category</u>	<u>Date of first appointment</u>	<u>Meetings attended 2008</u>
Kenneth Crofton Martin	CIOT	15 March 2001	2
Helen Folorunso	Lay	15 March 2001	1
Elizabeth Hinds	Lay	1 April 2007	5
Alison Middleton	CIOT	15 March 2001	2
Ken Monk	CIOT	15 March 2001	2
Brian Ogilvie	CIOT	23 January 2002	1
Marilyn Palmer	ATT	1 April 2007	2
Nicola Burnett Smith	Lay	3 October 2001	4
Barbara Stephens	Lay	1 April 2007	0
Linda Stone	Lay	1 April 2007	1
Rod Varley	Lay	1 April 2007	5

Barbara Stephens resigned from the Committee in February 2008. Two new lay members (Simon Colton and Judith Worthington) were appointed with effect from 1 September, but were not eligible to sit until they had attended a training session, which took place in December. The terms of Helen Folorunso, Nicola Burnett Smith and Brian Ogilvie expired in March 2009. Two new lay members (Bill Nelson and Paul Pharaoh) were appointed from 1 April 2009.

Disciplinary Panel

The Disciplinary Panel had nine members for most of the year. Three Disciplinary Tribunals were held during the year, but no meetings of the Appeal Tribunal. Tribunals are 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, the dates of their original appointment, and the number of Tribunals they attended are as follows:

<u>Name</u>	<u>Category</u>	<u>Date of first appointment</u>	<u>Tribunals attended 2008</u>
Ken Ball	Lay	1 August 2003	1
Brian Cleave	Lawyer	1 January 2006	1
Julie Dingwall	ATT	1 October 2007	1
Paul Heim	Lawyer	1 October 2004	0
Nick Lloyd	CIOT	30 May 2001	1

Peter Newman	Lay	15 March 2001	1
Angus Nicol	Lawyer	1 January 2006	2
Tony Ring	CIOT/ATT	1 August 2003	0
William Silsby	CIOT	11 March 2008	1
Michael Squires	CIOT/ATT	15 March 2001	0
Stephen Walzer	Lawyer	1 April 2007	0
Michael Warburton Wood	CIOT	15 March 2001	0

Tony Ring's and Michael Warburton Wood's terms expired on 31 March 2008, Stephen Walzer resigned during March 2008 and Paul Heim in April 2008. Four new lawyers (Richard Barlow, John Burrow, Emily Windsor and Andrew Young) were appointed with effect from 1 September, but were not eligible to sit until they had attended a training session held in December. John Burrow sat on a Disciplinary Tribunal in December. One additional lay member, Valerie Charbit, is being appointed with effect from 1 April 2009.

In the course of 2009, the Board recruited additional tax specialists who are members of the Institute or the Association in order to replace some of those who had served since the Scheme was first set up. New appointees were not eligible to sit until they have first attended a training session. Meanwhile, in order to prevent a shortage of professional members, the appointments of Ken Monk, Nick Lloyd and Michael Squires were extended during 2009 until the new tax specialists were recruited and trained.

GUIDANCE TO PANELS

One of the major areas for the Board over the past year has been the preparation of guidance for panel members on particular aspects of the new arrangements. Guidance is intended to help panel members to do their job more effectively and to produce a measure of consistency in decision-making. Decisions must always reflect the particular circumstances of the individual case; but the process for arriving at a decision needs to be broadly consistent in order to achieve fairness for the complainant and the member alike.

(i) The role of Assessors

One of the issues on which early guidance has been issued concerns the role of Assessors. Under the new arrangements there is provision for the Board to appoint Assessors drawn from the membership of both the Investigation and the Disciplinary Panels. The role of the Investigatory Assessor is to re-examine decisions of the Reviewer and the Investigation Committee where these are challenged by the member or the complainant. Thus the complainant may object to an initial decision by the Reviewer to reject a complaint on the grounds that it is trivial or vexatious, falls outside the jurisdiction of the Board, or has been submitted out of time. The Assessor is responsible for reviewing the decision taken by the Reviewer and must either uphold that decision or decide that the complaint should go forward to the Investigation Committee.

The Investigatory Assessor can also examine appeals against a finding by the Investigation Committee that the complaint did not disclose a prima facie case to answer or that, even though there was a prima facie case, the matter was too minor to warrant further action or the evidence was unlikely to be of sufficient strength to establish a case before a Disciplinary Tribunal. In such cases the Assessor may uphold the finding of the original

Investigation Committee or order that the complaint should be re-heard by a second Investigation Committee composed of members who have not had any prior involvement with the complaint.

The role of the Disciplinary Assessor is to consider the grounds on which a party is appealing against a decision or order of a Disciplinary Tribunal and decide whether the appeal falls within the grounds set out in the Regulations. Provided that the appeal falls within the specified grounds, it will be allowed to go forward to the Appeal Tribunal.

(ii) Costs

Another topic on guidance has been provided relates to the award of costs against a member against whom an adverse finding has been made by a Disciplinary Tribunal. As a matter of principle, the Board considers that the polluter should pay, rather than that the costs of bringing a successful case against a member should be borne by the entire membership. The guidance addresses the factors and elements to be taken into account by the Tribunal in assessing whether costs are payable, and if so how those costs should be calculated. The aim of the Board is to ensure a degree of consistency in the approach taken by Disciplinary Tribunals.

(iii) Fixed penalties

The Board has approved guidance as to the basis on which the Reviewer may impose a Fixed Penalty for a complaint which entails a breach of the administrative rules of one of the participants. The provision to impose a penalty charge of up to £500 for each breach is set out in the Regulations. The decision to impose a Fixed Penalty will usually arise where the complaint raises an issue which does not directly impinge upon members of the public, for example a failure by a member to respond to a request

by the ATT or CIOT to provide details of his Compulsory Professional Development or a failure to inform the ATT or the CIOT of disciplinary proceedings instituted by another professional body on a matter that does not involve tax. This is not intended to suggest that such failings are trivial. Each complaint is examined on its merits. But it is important that complaints are dealt with proportionately. The availability of Fixed Penalty arrangements is intended to provide a quick and effective remedy for what are essentially minor failings which may often arise through ignorance or inadvertence.

Under the guidance, the Reviewer is authorised to impose a penalty of £150 for a first offence involving a straightforward case of a single breach and £200 for a more complex case. For a second similar offence within a five-year period, the penalty would be £250 for a straightforward case or £300 for a complex case. If there were a third offence by a member within a five-year period, the complaint would go forward in the normal way to the Investigation Committee to decide upon any further disciplinary action.

(iv) Future guidance

Guidance is currently in preparation dealing with further topics, including publicity for decisions of Tribunals; the need to provide reasons for all decisions taken by Tribunals; and guidance for the Investigation Committee on its decision-making processes.

A further topic for early guidance will be the preparation of Indicative Sanctions Guidance. Under the Regulations, Disciplinary Tribunals are required to take such guidance into account before deciding what sanction to impose upon a member against whom some or all the charges are found to be proven. The majority of disciplinary bodies have either produced such guidance or are in the process of preparing it. The aim of such guidance is to ensure that all the relevant factors are taken into account before a sanction is imposed and that Tribunals act in a consistent manner in imposing such sanctions. The new Scheme provides for a number of alternative sanctions, and it is important for all parties involved that the criteria relevant to each be considered by the Tribunal before reaching its decision. It is intended to consult members of the Disciplinary Panel before the guidance is finalised. Once it is issued the Indicative Sanctions Guidance will, like the previous guidance, be published on the Board's website.

FINANCIAL INFORMATION AND ACCOUNTS

Statement of Directors' responsibilities

The Directors are responsible for preparing the Annual Report and the financial statements in accordance with applicable law and regulations.

Company law requires the Directors to prepare financial statements for each financial year. Under that law the Directors have elected to prepare the financial statements in accordance with United Kingdom Generally Accepted Accounting Practice (United Kingdom Accounting Standards and applicable law). The financial statements are required by law to give a true and fair view of the state of affairs of the Company and of the profit or loss of the Company for that period. In preparing those financial statements, the Directors are required to:

- a. Select suitable accounting policies and then apply them consistently;
- b. Make judgements and estimates that are reasonable and prudent; and
- c. Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Company will continue in business.

The Directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the Company and to enable them to ensure that the financial statements comply with the requirements of the Companies Act 1985. They are also responsible for safeguarding the assets of the Company and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Auditors

Early in 2008 the Directors decided that, in view of the proposal of Baker Tilly UK Audit LLP to more than double its audit fee, the firm should be replaced. This would

also have the advantage of separating the TDB's audit from that of the participant bodies. An Extraordinary General Meeting of the Company was held on 26 February 2008, when a resolution was adopted to appoint Alan Secker & Co in place of Baker Tilly UK Audit LLP. Baker Tilly UK Audit LLP was informed of this resolution and raised no objections.

At the end of the year, Alan Secker & Co gave notice that for personal reasons their firm would no longer be able to carry out the audit of the TDB. The Board selected Hillier Hopkins LLP to carry out the audit for 2008, and a resolution to this effect was adopted by the Company at an Extraordinary General Meeting held on 18 February 2009.

Statement of Disclosure of Information to Auditors

The Directors who were in office on the date of the approval of these financial statements have confirmed, as far as they are aware, that there is no relevant audit information of which the auditors are unaware. Each of the Directors has confirmed that they have taken all the steps that they ought to have taken as Directors in order to make themselves aware of any relevant audit information and to establish that it has been communicated to the auditors.

This report is prepared in accordance with the special provisions relating to small companies within Part VII of the Companies Act 1985 and with the Financial Reporting Standard for Small Entities effective January 2007 and this report was approved by the Board on 12 May 2009.

By order of the Board

N A Nagler - Company Secretary
13 May 2009

**INDEPENDENT AUDITOR'S
REPORT TO THE MEMBERS OF
THE TAXATION DISCIPLINARY
BOARD LIMITED**

We have audited the financial statements of The Taxation Disciplinary Board Limited for the year ended 31 December 2008, set out on pages 7 to 10. These financial statements have been prepared in accordance with the accounting policies set out therein and the requirements of the Financial Reporting Standard for Smaller Entities (effective January 2007).

This report is made solely to the company's members, as a body, in accordance with Section 235 of the Companies Act 1985. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an Auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of Directors and Auditors

The Directors' responsibilities for preparing the financial statements in accordance with applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice) are set out in the Statement of Directors' responsibilities.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Act 1985. We also report to you whether in our

opinion the information given in the Directors' report is consistent with the financial statements.

In addition we report to you if, in our opinion, the company has not kept proper accounting records, if we have not received all the information and explanations we require for our audit, or if information specified by law regarding directors' remuneration and other transactions is not disclosed.

We read the Directors' report and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In our opinion

- the financial statements give a true and fair view, in accordance with United Kingdom Generally Accepted Accounting Practice applicable to Smaller Entities, of the state of the company's affairs as at 31 December 2008 and of its profit for the year then ended;
- the financial statements have been properly prepared in accordance with the Companies Act 1985; and
- the information given in the Directors' report is consistent with the financial statements.

HILLIER HOPKINS LLP

Chartered Accountants,
Registered Auditor

64 Clarendon Road,
Watford,
Herts
WD17 1DA

Date: 18 May 2009

**INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED
31 DECEMBER 2008**

	Note	2008	2007
		£	£
Contributions to expenditure from participating bodies	2	135,450	129,000
Cost and Fixed Penalty awards recovered		6,816	1,350
Bank interest		1,490	616
		<u>143,756</u>	<u>130,966</u>
EXPENDITURE			
Amounts payable to Directors	1.3	20,868	37,961
Amounts payable to Panel members		12,534	7,819
Salaries (including NI)	1.3	56,961	49,099
Postage, stationery, communications		1,595	2,108
Scheme review	1.3	655	4,839
Legal costs	1.3	8,950	6,636
Training for panel members		19,765	11,195
Audit		1,668	1,028
Travel and meetings		3,109	4,500
Office and computer costs		1,948	3,181
Recruitment		533	221
Insurance		1,387	1,368
Bank charges		29	29
Miscellaneous		174	64
		<u>130,176</u>	<u>130,048</u>
SURPLUS FOR THE YEAR		13,580	918
Less transfer to participating bodies	6	(13,580)	(918)
		<u>---</u>	<u>---</u>

The result for the year arises from continuing operations.

No separate statement of total recognised gains and losses has been presented as all such gains and losses have been dealt with in the Income and Expenditure Account.

The notes on pages 29 and 30 form part of these financial statements.

BALANCE SHEET AS AT 31 DECEMBER 2008

	Note	2008 £	2007 £
Current Assets			
Debtors	4	10,630	2,728
Cash at Bank		<u>24,456</u>	<u>5,637</u>
		35,086	8,365
Creditors			
Amounts falling due within one year	5	(35,086)	(8,365)
		<hr/>	<hr/>
Net Current Assets		-	-
		<hr/> <hr/>	<hr/> <hr/>
Reserves			
Income and expenditure account		-	-
		<hr/> <hr/>	<hr/> <hr/>

These accounts have been prepared in accordance with the special provisions of Part V11 of the Companies Act 1985 relating to small companies.

Approved by the Board of Directors and authorised for issue on 12 May 2009 and signed on its behalf by:

V V R Harris
Director

P S Gravestock
Director

The notes on pages 29 and 30 form part of these financial statements.

**NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED
31 DECEMBER 2008**

1. Accounting Policies

1.1 Accounting convention

The financial statements have been prepared under the historical cost convention in accordance with the Financial Standard for Smaller Entities (effective January 2007).

1.2 Income

The Scheme is financed by the Chartered Institute of Taxation and the Association of Taxation Technicians. The Investigation Committee and Disciplinary Tribunal costs are shared between the two bodies in proportion to the numbers of cases dealt with from each body. All other costs are shared equally.

The Disciplinary Tribunal is empowered to make orders for the payment of costs and fines. In addition, the Board is empowered to make orders for the payment of Fixed Penalty charges for breaches of the participants' administrative requirements. Credit is taken on receipt.

1.3 Expenditure

Expenditure includes fees and expenses of Board and Committee members for meetings and hearings held in the year.

Amounts payable to Directors for 2007 have been restated to include £16,403 originally included as part of the costs for training, recruitment and the Scheme review. Corresponding adjustments have been made to the expenditure on those items.

2. Net contributions to expenditure from participating bodies.

Contributions by the participating bodies are calculated to cover the Scheme's total expenditure less fines and costs recovered in the year, so that there is neither a surplus nor a deficit.

	2008	2007
	£	£
The Chartered Institute of Taxation (CIOT)	84,000	74,500
The Association of Taxation Technicians (ATT)	<u>51,450</u>	<u>54,500</u>
	135,450	129,000
Allocation of surplus	(13,580)	(918)
	<u>£121,870</u>	<u>128,082</u>

3. Movements on the accounts with the participating bodies.

	CIOT	ATT
	£	£
Balance as at 1 January 2008	(8,365)	2,728
Contributions	<u>(84,000)</u>	<u>(51,450)</u>
	(92,365)	(48,722)
Shortfall on salary deductions	13,071	---
Net Cost Allocations	<u>36,726</u>	<u>59,700</u>
Balance as at 31 December 2008	<u>£(42,568)</u>	<u>£10,978</u>

4. Current Assets

	2008	2007
	£	£
The Association of Taxation Technicians	<u>£10,978</u>	<u>£2,728</u>

Amounts owed by the Association represent the shortfall on contributions paid by the Association compared with the expenses apportioned to it.

5. Creditors - amounts falling due within one year

	2008	2007
	£	£
The Chartered Institute of Taxation	<u>£42,568</u>	<u>£8,365</u>

Amounts owing to the Institute represent the excess of its contributions compared with the expenses apportioned to it.

6. Allocation of Surplus for the year

This is included in the net cost allocations shown at Note 2 above

	2008	2007
	£	£
Surplus for the Year	13,580	918

Allocated to the participant bodies:

The Chartered Institute of Taxation	(6,790)	(459)
The Association of Taxation Technicians	<u>(6,790)</u>	<u>(459)</u>
	<u>(13,580)</u>	<u>(918)</u>
Transferred to Reserves	-	-
	—	—

7. Related Parties

The Chartered Institute of Taxation and the Association of Taxation Technicians are both related parties by virtue of their ability to influence the conduct of the company's affairs.

ANNEX

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. This followed an in-depth review of the previous Scheme carried out by a firm of solicitors specialising in professional regulation.

The main elements of the disciplinary process are set out below.

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. If the complaint appears to be minor and to raise no disciplinary issues, it may be sent for conciliation. The complainant may appeal to an independent Investigatory Assessor against any decision to reject a complaint; the Assessor will then decide whether 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 members of the Panel are listed on Page 20.

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. (The members of the Panel are listed on Pages 20-21.) 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 censure, 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.

**TAXATION
DISCIPLINARY
BOARD**

PO Box 544

Pinner

HA5 9EY

Tel/fax: 020 8868 9717

www.tax-board.org.uk

**The Taxation Disciplinary Board Limited
Registered Office: Artillery House, 11-19 Artillery Row, London SW1P 1RT
A Company registered in England, number 4210063**