

**TAXATION
DISCIPLINARY
BOARD**

ANNUAL REPORT

and

ACCOUNTS

2009

THE TAXATION DISCIPLINARY BOARD 2009

Board Directors

Vicki Harris MA, Ph D, FCCA, C Dip A F (Chairman until 30 September 2009)

Desmond Hudson LI B (Chairman from 1 November 2009)

John Clark MA, CTA (Fellow) (2005)

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

(Year of appointment shown in brackets)

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CHAIRMAN'S REPORT

I feel some diffidence in producing my first contribution to the TDB's Annual Report, having only taken over as Chairman last November. I must first pay tribute to Vicki Harris, who proved an outstanding predecessor during her five years as Chairman. She drove through the creation of the new Scheme in 2007-08, which better reflected best regulatory practice and more recent case law. Vicki was also instrumental in enhancing the independence of the Board by creating, with the support of the CIOT and ATT, a dedicated office for the TDB and appointing our own part-time Executive Director. Largely through her efforts, we now have a disciplinary structure of which the tax profession can be proud.

Although a newcomer, my first impressions are of an organisation that works smoothly and is fit for purpose. Any organisation which operates in the field of complaints and discipline is bound to operate reactively in its handling of those aspects. If a complaint is submitted, the TDB has to deal with it according to the procedures laid down for us, and if a case is referred to a Disciplinary Tribunal we cannot short-circuit the due procedures in order to deliver a more economical or cost-effective outcome. Our accounts for 2009 show a large deficit, but this was expected, following the large surplus in 2008. We knew that there were several large tribunal cases waiting in the wings, one of which required nearly four days of hearings. We have to pay our presenting barrister and our panel members for their time, and it is those two components in our expenditure that largely explain the deficit last year. Virtually every other item came in at or below budget.

Turning to the challenges ahead, several of these are discussed in the pages ahead. Early in 2010 we shall be making new Regulations, and although they are unlikely

to make great changes to our working practices they should nevertheless help to remove some of the anomalies which our panel members have identified during the two years since the new Scheme took effect.

Review of jurisdiction

In the light of advice from Counsel about the relationship between the powers of the TDB as set out in our Scheme and the provisions for disciplinary action contained in the governing documents of the ATT and CIOT, it appears that there may well be some gaps. We are concerned that the TDB's jurisdiction should not be open to challenge in the courts, and have suggested that we undertake a joint review, together with the ATT and CIOT, to ensure that the TDB can deal with any kind of complaint, whether against an individual member or a regulated firm, and that there is no way to evade our disciplinary procedures by resigning or relinquishing CTA status. It is contrary to the public interest, as well as damaging to the two participants, if complainants find that the TDB cannot deal with their complaints, even though they consulted the member or firm in the belief that they were properly regulated. So we need to review all the membership provisions to ensure that they operate as a seamless whole, and that is what we shall be doing during 2010.

Interim orders

A related issue, which Vicki Harris flagged up in last year's Annual Report, concerns the possibility of introducing interim order powers. The current Scheme 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 practise 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 many other professions, where Interim Orders may be made restricting or preventing the practice of the person facing serious charges. In the case of tax advisers, there is nothing to prevent a member from continuing to work as a tax adviser even if he were suspended under an interim order, so the effect may be more presentational than substantive, but even so it is a matter that merits further examination.

Appointments

We shall need to recruit some new lay members for our panels later in 2010. All such appointments are advertised, and we have a selection process that seeks, as far as possible, to conform to the standards in place for public appointments. My own appointment followed a comparable practice, and we shall encourage the CIOT and ATT to do likewise when the time comes for them to appoint new Board members. This is an important means of demonstrating the independence of the TDB, quite apart from widening the pool from which candidates are drawn. My predecessor has pointed to the importance of having a closer relationship with our two participants, and that is something I shall encourage. Aside from this Annual Report, we ought to develop a sequence of regular meetings so that the TDB can set out what it is doing, raise issues of mutual concern and receive any feedback.

Other Professional Bodies

Another live issue at the moment is the possibility of having other organisations joining the TDB. 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. Because of the

expense of running an independent disciplinary scheme, there is also a trend towards organisations working together and sharing adjudication arrangements. It would therefore be an opportune time for the various professional taxation bodies to consider sharing the disciplinary resources of the TDB. I would hope to be able to explore this possibility with other professional taxation bodies so that they can benefit from the expertise of the TDB and its skilled panel members. A start has already been made, and I hope that in the course of 2010 we may see another tax body join the ATT and CIOT as participants in the TDB.

Indicative Sanctions Guidance

In the course of this year we shall be preparing Indicative Sanctions Guidance for our Tribunals. The aim is to ensure that Disciplinary and Appeal Tribunals are consistent in the sanctions they impose. The preparation of such guidance is a major task for the Board, 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 (HMRC) about the standards required of taxation professionals and what the consequences are if those standards are not met or maintained. We know that HMRC are taking an increasing interest in the role of tax advisers, with consultation papers issued during 2009 setting out their proposals for working with tax agents. The TDB was invited to discuss these matters with HMRC early in 2010, and we may in due course receive information in cases where HMRC come across disciplinary issues which involve members of the ATT and CIOT. We look forward to a cooperative working relationship with HMRC.

Conclusion

So there is a significant agenda for the TDB. I am grateful to the Officers of the ATT and CIOT for the opportunity they have given me to serve the tax profession and take forward the work of the TDB. I pay tribute to our dedicated Executive Director, Neville Nagler, who ensures the smooth running of the organisation and provides an invaluable contribution in taking forward many of our policy issues.

Finally, it is a privilege and pleasure to work with my fellow Directors, John Clark and Peter Gravestock. I am grateful to them all for their wise advice and consistent support, and look forward to working with them in the year ahead in order to ensure that the TDB remains capable of delivering best regulatory practice.

DES HUDSON
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

Last year proved to be another extremely busy year for the TDB. Although there were five fewer complaints than the record number of 38 complaints in 2008, many of these proved complex and time-consuming. With six meetings of the Investigation Committee, five Disciplinary Tribunals and one Appeal Tribunal, it was 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 Pages 17-18 of this report can be met on a consistent basis. One of the major problems that surfaced during the year relates to the enforcement of Tribunal orders, which I discuss more fully below.

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 filtered out five complaints on the grounds that they fell outside the jurisdiction of the TDB or that the issues they raised were trivial. In a further four cases I was able to apply 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. I also process any cases where there is a request for an appeal, and act as Secretary to the Appeal Tribunal.

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 three cases last year in which members ignored Tribunal orders, we secured judgment from the County Court. But that still leaves the problem of enforcement. One member paid the costs in the light of the judgment, but two other members have continued to ignore the court orders. We are now having recourse to debt collection agencies, and are considering additional measures to deal with those members who happily flout the requirements of their disciplinary body. It is proving slow and time-consuming to seek to resolve matters by this route. But failure to do so would mean that the membership as a whole would have to pay for the proven misconduct of individual members.

There have also been difficulties with members who completely ignore all correspondence from the TDB. Several members were referred to a Disciplinary Tribunal after ignoring the TDB for several months. One member ignored all correspondence from the TDB after he had been fined and censured by a Disciplinary Tribunal, and had to be referred to a further

Tribunal, who expelled him. The member had clearly received the TDB's correspondence, as he referred to it when making an unfounded allegation that the announcement of the original Tribunal findings on the TDB website was defamatory. Another case which proved particularly time-consuming arose from an expelled member whose fine and costs were being pursued in the County Court. The member made a number of unfounded claims in his defence, as a result of which the TDB sought Counsel's opinion as to the extent of its powers. Fortunately the court upheld our claim and awarded judgement against the ex-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 21-22 below). We spent considerable time reviewing the Regulations and preparing instructions for Counsel on the areas where changes were required. By the end of the year, we had obtained a draft set of revised Regulations, which the Board approved in January 2010. Following consultation with panel members, the new Regulations will be introduced during the summer. Another topic which we are continuing to explore is whether the TDB should have a power to make an interim order to suspend a member in serious cases pending a Tribunal hearing (see Page 5 above)..

We have also consulted Counsel on the extent of the Board's jurisdiction to enforce orders against former members and on the scope of the Board's powers to deal with complaints against firms. In the light of Counsel's advice, and with the participation of the ATT and CIOT, we shall be undertaking a review of the relationship between the laws and regulations of the two participants and the powers of the TDB, with a view to ensuring that any gaps or

omissions in our jurisdiction can be resolved.

TDB Panels and Board

The appointment of new professional members during the summer generated a good deal of work. Apart from advertising in Tax Adviser, the CIOT and ATT wrote round to their branches to encourage their members to apply. In the event, we received 18 applications for a total of six vacancies. Following their induction training, all the new members were appointed with effect from 1 July, and were able to sit with immediate effect. In order to assist panel members, an updated information pack was prepared and provided to each member for reference.

Part of my role is to follow up on all decisions reached by the Directors, whether at Board meetings or less formally. One of the major remits last year was the preparation of the Board's second Annual Report, which has now become a regular production. We have also had our website redesigned during the year to make it more attractive, informative and user-friendly. The Board meets quarterly, and last September saw the retirement of Vicki Harris at the end of her five years as Chairman. Vicki made a remarkable contribution to the development of the Board and proved an invaluable source of advice and support. The appointment of Des Hudson as the new Chairman has proved an excellent choice, and I look forward to a close working relationship in the coming years.

The volume of work falling to the Executive Director has again called for rather more than the expected three days a week. Even so, I believe that the TDB delivers excellent value for money. Given the tasks required of any professional disciplinary body in today's climate, the TDB operates efficiently and effectively. Its overall budget and unit costs are modest, particularly when compared with those of

other regulatory bodies 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. I welcome the contribution made by our panel members, and was glad that in December we were able to organise a small reception to thank

them, together with our external contacts, for all their support. And most especially, I have valued enormously the advice and unstinting effort provided by the Board's Directors in ensuring the sound direction of my work and of the Board's range of activities.

NEVILLE NAGLER
Executive Director

CASES HANDLED IN 2009

Complaints received by TDB

The TDB received 33 new complaints during 2009, compared with 38 cases the previous year (the highest total for any year since the Scheme started during 2001). The table below sets out the annual total of complaints received and cases disposed of by both the Investigation Committee and the Disciplinary Tribunal (formerly the Disciplinary Committee). It demonstrates the fluctuations in the volume of complaints received and handled by the TDB since it was set up.

<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	15
2005	17	25
2006	22	20
2007	35	35
2008	38	38
2009	33	25

The table below sets out in more detail the handling of cases by the TDB in 2008 and 2009.

	Number of Cases	
	2008	2009
Complaints received by Reviewer		
▪ Brought forward from previous year	5	5
▪ New cases in year	<u>38</u>	<u>33</u>
	<u>43</u>	<u>38</u>
▪ Cases withdrawn or not pursued by complainant	15	5
▪ Cases rejected by Reviewer (trivial, vexatious or outside jurisdiction)	0	5
▪ Minor cases not involving misconduct *	3	0
▪ Cases where fixed penalty charge ordered	2	4
▪ Cases referred to Investigation Committee	17	12
▪ Cases referred directly to presenter for additional charges for Disciplinary Tribunal	1	0
▪ Carried forward to next year	<u>5</u>	<u>12</u>
	<u>43</u>	<u>38</u>
Investigation Committee		
▪ No prima facie case or no action taken	8	1
▪ Prima facie case but no action taken	2	0
▪ Referred for presentation to the Disciplinary Tribunal	6	12
▪ Cases adjourned pending receipt of more information	<u>1</u>	<u>0</u>
	<u>17</u>	<u>13</u>

Disciplinary Tribunal

▪ Brought forward from previous year	5	4
▪ New cases in year	<u>7</u>	<u>12</u>
	<u>12</u>	<u>16</u>
▪ Case dismissed	3	0
▪ Sanction imposed	5	9
▪ Carried awaiting hearing at end of year	<u>4</u>	<u>7</u>
	<u>12</u>	<u>16</u>

Appeal Tribunal

■ Cases appealed by the Board	0	1
■ Appeals upheld	<u>0</u>	<u>1</u>

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

In 2009, the 33 new complaints were made against 29 professional members, of whom 14 belonged to the ATT, 11 to the CIOT and 4 had dual membership. Two complaints were made against one CIOT member, whilst two complaints was made against firms registered with the CIOT. In addition, five cases were brought forward from the previous year, giving a total of 43 cases to process. Twelve cases were still under investigation at the end of the year; nearly all of these were received during the last three months of the year.

Source of complaint

The new complainants in 2009 fell into the following categories:

- 10 were current clients
- 7 were former clients
- 1 was a relative of a client
- 3 were tax advisers to a former client
- 1 was a shareholder in a company where the member's firm was the secretary
- 5 were referred by the CIOT on the basis of reports of disciplinary action taken by the Institute of Chartered Accountants in England and Wales;
- 1 was referred by the Association of Chartered Certified Accountants as a result of disciplinary action taken by that body;
- 3 were referred by the ATT for failure to provide CPD or AML returns
- 1 was referred by the TDB for failure to comply with a Tribunal order
- 1 was anonymous

Grounds for complaint

The 33 new complaints received in 2009 raised in total 54 separate grounds for complaint. These fell into the following categories:

Maladministration	5
Theft	1
Deception	1
False accounting	1
Failing to respond to correspondence in a timely manner	12
Incompetence	5
lack of objectivity	1
Professional misconduct	3

Failure to comply with order of a professional body	1
Failure to submit CPD record	2
Dishonesty	2
Practising without Professional Indemnity Insurance	2
Failure to report disciplinary action taken by another professional body	5
Inadequate professional service	7
Failing in duty of care	3
Discreditable conduct	2
Failure to register for AML purposes	<u>1</u>
Total number of grounds for complaint	<u>54</u>

Handling of complaints by the Reviewer

A number of cases were withdrawn before they reached the Investigation Committee. Three cases were rejected by the Reviewer on the grounds that they fell outside the jurisdiction of the Board. In one case it was found that the person who was the subject of the complaint was not a member of either body; in another case the member had been dealt with by the ICAEW for a regulatory infringement rather than a disciplinary matter; whilst the third case proved on investigation to be a fee dispute. Two cases were rejected as being trivial or vexatious: in one case, the complainant failed, despite several requests, to provide material to substantiate his allegations, whilst the other case involved an anonymous complainant who gave a false name, address and telephone number. One of these cases was appealed by the complainant; the Investigatory Assessor upheld the reviewer's decision.

No complaints were sent to the CIOT's Conciliation Officer during 2009. In four cases the Reviewer imposed a fixed penalty charge: two cases involved a failure to notify the CIOT of a disciplinary order made by another regulatory body in cases which raised no issue of misconduct; another related to a failure to provide the ATT with CPD details when so requested; and the fourth related to a failure to register with the ATT for anti-money laundering (AML) purposes.

In a further five cases the complainant decided not to pursue the complaint. Two of these were withdrawn by the CIOT or ATT after they had seen the explanation given by the member. In the remaining three cases, after two rounds of correspondence from the member the complainant agreed to withdraw the complaint after it became clear that the matter in question had been resolved and that there was no evidence of misconduct.

In the course of the last three months of the year, 12 cases were received, and most of those were still being dealt with at the end of the year or awaiting submission to the Investigation Committee. In addition, one case was still outstanding from 2008, involving a member who had failed to comply with a County Court judgment obtained to enable the TDB to recover financial penalties and costs owing to it. This case was dealt with early in 2010 by the Investigation Committee, who referred the case to a Disciplinary Tribunal.

The processes for the handling of cases prior to their consideration by the Investigation Committee and the planned timescales are described on Pages 32 and 17 of this Report respectively. Of the twelve 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>2009</u>	<u>2008</u>
1 month	0	0
2 months	0	5
3 months	2	3
4 months	2	5
5 months	1	2
6 months	2	2
<u>More than 6 months</u>	<u>5</u>	<u>0</u>
Total	<u>12</u>	<u>17</u>

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 17 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.

In several cases which took more than six months to reach the Investigation Committee, substantial delays were caused by the failure of the member to respond to the complaint. In two cases the member failed to make any response whatsoever, and it proved necessary to resend correspondence. One of those complaints was suspended for some months pending a police investigation. In the other case, the member claimed illness as a reason for delaying a response. Another case was deferred at the request of the complainant, pending a court case brought against him by the member. In a further case, delay was due to an appeal to another professional body. In the final case, it proved extremely

difficult to obtain clear documentary material from both the complainant and the member, both of whom kept submitting a mass of extraneous documentation.

Investigation Committee

The Investigation Committee held 6 meetings during the year. It considered 1 case started in 2007, 5 cases started in 2008 and 7 cases started in 2009.

Of the 13 cases completed in 2008, the Investigation Committee found no Prima Facie case in only 1 case, which raised an allegation of maladministration in respect of a tax refund. The remaining 12 cases considered by the Investigation Committee were all regarded as sufficiently serious to be referred to a Disciplinary Tribunal.

Two cases were considered by a Second Investigation Committee, following decisions made by Investigatory Assessors that they should be reconsidered following appeals by complainants against previous decisions that there was no prima facie case on any of the grounds cited. The Second Investigation Committee decided to refer both cases to a Disciplinary Tribunal.

Disciplinary Tribunal

Five Disciplinary Tribunals were held during 2009. Meeting in panels of three, the Tribunals dealt with three cases brought forward from 2008 and six cases referred in 2009. A further seven cases were pending at the end of 2009, all due to be dealt with during the first half of 2010.

None of the cases heard by the Disciplinary Tribunal in 2009 was dismissed for lack of evidence; in each case one or more of the charges was found proved. Brief details of each case are set out below.

- A member of the CIOT had failed to respond to correspondence from the complainant, a chartered certified accountant, seeking confirmation that

there was no professional reason why he should not undertake the appointment to act for a former client of the member. The member had displayed a lack of courtesy and consideration through his failure to respond to a succession of letters from the complainant regarding the former client's business affairs. The member had also failed to respond in writing to requests in several letters from the Taxation Disciplinary Board for information about his conduct which was reasonably requested by the Board. Whilst the member had sent the Tribunal a written apology for his misconduct, the Tribunal decided that the only appropriate sanction was to order the expulsion of the member from the Institute. The Tribunal ordered that he pay costs of £2,393.

- A student member of the Institute was found guilty of failing to report a criminal conviction and of failing to report disciplinary proceedings commenced by another professional body. The student admitted that he had failed to report to the Institute a criminal conviction for false accounting, to which he had pleaded guilty at Isleworth Crown Court in April 2007. He had also failed to report disciplinary action brought against him by the Association of Chartered Certified Accountants as a result of his conviction. The Tribunal ordered that, in view of the gravity of his conduct, the only appropriate sanction was to expel him from student membership of the Institute. The Tribunal ordered that he should pay costs of £250.
- A member of the CIOT was found not to have in place adequate Professional Indemnity Insurance (PII) between 21 December 2004 and 11 January 2005 or between 12 January 2006 and 27 August 2008. Whilst he may to some extent have been let down by his brokers in respect of the earlier period,

in relation to the later period the member took a conscious decision not to take out "run-off" insurance for his former business. He subsequently informed the Taxation Disciplinary Board that he had had in force adequate cover when this was not the case. The Tribunal also found that the member failed to provide a proper response to requests from the complainant to ascertain whether he had in place adequate PII cover. The Tribunal imposed a censure on each of the three charges; a warning to comply with the Institute's Compulsory Professional Indemnity Insurance Regulations; and a fine of £500. He was also ordered to pay costs in the sum of £5,811.

- A member of the CIOT was found to have brought the CIOT into disrepute by virtue of his disqualification in 2002 from acting as a director of a company for a period of ten years, and that he further brought the CIOT into disrepute by acting in breach of that disqualification order, resulting in his conviction in the Southwark Crown Court in December 2004 for being concerned in or taking part in the management of a company whilst disqualified. The Tribunal also found that by his own admission and conviction in May 2006, the member had participated in false accounting and in aiding and abetting, counselling and procuring fraudulent trading in relation to VAT evasion, and thereby brought the CIOT into disrepute. The Tribunal decided that the matters in question were so serious that the necessary and proportionate sanction for each charge was expulsion from the Institute. The member was ordered to pay costs in the sum of £8,137.
- A member of the ATT was found to have failed to act with integrity when signing off an audit programme,

passing off work as fully audited when charges alleging incompetence and a lack of integrity in attempting to cover up that alleged incompetence were not found to be proved. The Tribunal ordered that the member be censured and fined £500. She was ordered to pay costs of £2,092.

- A member of the ATT was found to have provided inadequate professional service to the complainant, failed to take care in her professional dealings and performed her professional work inefficiently or incompetently to such an extent that it was likely to bring discredit to the member, the ATT and the tax profession. In particular the member had failed to comply with instructions in respect of correspondence with HMRC and ensure that HMRC received correspondence sent on behalf of the complainant. The Tribunal also found that the member had failed to cooperate with a successor adviser, by failing to grant clearance or to provide the client's documents within a reasonable time. The Tribunal ordered that the member be censured on each of the proven charges and fined a total sum of £2,750. She was ordered to pay costs in the sum of £3,239.
- A member of the ATT had failed to respond to correspondence in relation to the disciplinary process and in relation to orders made by a Disciplinary Tribunal pursuant to a hearing on 3 December 2008, and had failed to respond to correspondence from the TDB without unreasonable delay. The Tribunal found that such breaches demonstrated that he conducted his practice or business considered that, in ignoring the Tribunal set up by his own professional body, the member had shown a marked degree of discourtesy and contempt. The Tribunal ordered his expulsion

it was not fully audited. Two other from the ATT, and that he pay costs of £2,794.

- The Tribunal found that a student member of the CIOT had performed her duties as an employee in such a way as to bring discredit to herself, the CIOT and the tax profession. She had sent an email containing client information to her boyfriend, thereby failing to respect the confidentiality of client information through an improper disclosure to a third party. For these actions she had been disciplined by the ACCA. In view of the student's frank admissions, including the fact that she had brought the matter to the notice of both the ACCA and CIOT, the Tribunal ordered that the student should be censured and pay £500 in costs. The Tribunal also directed that the name of the student should not be published.
- In the ninth case, a notice of appeal was submitted by the member at the beginning of 2010.

Appeal Tribunal

One Appeal Tribunal took place in 2009 in order to hear an appeal brought by the TDB against a decision by a Disciplinary Tribunal to exclude evidence of findings made by another disciplinary body against a member of the CIOT. The Appeal Tribunal decided that that evidence should have been admitted, on the grounds that the relevant regulation was permissive, not mandatory, and that the TDB's proceedings did not require compliance with strict rules of evidence. Having decided to admit the relevant evidence, the Appeal Tribunal agreed to hear the charges that had been dismissed by the Disciplinary Tribunal.

The Appeal Tribunal found the remaining charges against the member proved. It decided that the breaches committed were very serious, in that they called into

question the member's integrity. The Tribunal considered that he had given no indication that he recognised the seriousness of his wrongdoing, and the Tribunal had no confidence that he might not behave in a similar way in the future. The Tribunal concluded that the only appropriate sanction for those breaches was

expulsion from membership of the CIOT. The Tribunal ordered that he should pay costs of a further £2,875, in addition to the fine and costs awarded at the original Disciplinary Tribunal hearing, but that he should not be required to pay the costs relating to the TDB's appeal.

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; or 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 then be investigated. In that event there will normally be two rounds of correspondence involving both the complainant and the member. The case is then prepared for a meeting of the Investigation Committee. Overall the Board anticipates that on average it takes around 3—4 months between receipt of the complaint form and the Investigation Committee hearing. In some cases, not every stage of the process will be required, for example where the complaint is made by one of the participant bodies and the issue is clear-cut. Delays may, however, be caused by either the member or the complainant in submitting correspondence. There may also be cases involving large quantities of paper which may arrive at a time when other work has to take priority. Investigation Committee meetings are scheduled every two months, but it may sometimes be necessary to postpone a meeting if there is insufficient 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 proceed 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.

The statistics contained in the previous section of this Report demonstrate the extent to which the above targets were achieved in 2009.

1. In 26 (79 percent) of the new cases the Reviewer determined within 2 months of receipt of the Complaint Form whether the case would proceed to the Investigation Committee.
2. In 7 cases (21 percent) the Reviewer was unable to determine a referral to the Investigation Committee within 2 months, owing to delays by either the member (4 cases) or the complainant (3 cases) in responding to correspondence from the TDB by the due dates.

3. 10 cases (83 percent) were ready for consideration by an Investigation Committee within 2.5 months of receiving all the requested correspondence from both the complainant and the member. Of the other two cases, one was deferred to allow more time for the member to respond to the allegations (which he failed to do) and the other was deferred owing to the continuing submission of additional material by the member.

4. 7 of the 9 cases (77 percent) heard by a Disciplinary Tribunal were ready within 5 months of their being referred by the Investigation Committee or by the Reviewer. So too was the single Appeal Tribunal case. One case took longer because the member was in prison and arrangements to secure his attendance at the Tribunal took a considerable time, whilst in the other case the volume of documentation required a preliminary case-management hearing conducted by the Tribunal Chairman.

PANEL MEMBERSHIP

Investigation Panel

The Investigation Panel had fourteen members for much of the year. Five members are selected on a rotating basis to sit as an Investigation Committee, with lay members in the majority. Six meetings of the Committee took place during 2009, whilst four members reviewed cases as Investigatory Assessors in the course of 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 2009</u>
Simon Colton	Lay	1 September 2008	3
Kenneth Crofton Martin	CIOT	15 March 2001	2
Amanda Dean	CIOT	1 July 2009	1
Helen Folorunso	Lay	15 March 2001	0
Elizabeth Hinds	Lay	1 April 2007	2
Binka Layton	CIOT	1 July 2009	1
Alison Middleton	CIOT	15 March 2001	2
Ken Monk	CIOT	15 March 2001	1
Bill Nelson	Lay	1 April 2009	2
Brian Ogilvie	CIOT	23 January 2002	1
Marilyn Palmer	ATT	1 April 2007	2
Paul Pharaoh	Lay	1 April 2009	3
Rachel Skells	CIOT	1 July 2009	0
Nicola Burnett Smith	Lay	3 October 2001	1
Linda Stone	Lay	1 April 2007	2
Robin Thomas	CIOT	1 July 2009	1
Rod Varley	Lay	1 April 2007	2
Judy Worthington	Lay	1 September 2008	2

The terms of Helen Folorunso, Nicola Burnett Smith and Brian Ogilvie expired in March 2009, and those of Kenneth Crofton Martin and Alison Middleton expired in March 2010. Two new lay members (Bill Nelson and Paul Pharaoh) were appointed from 1 April 2009, and four new professional members were recruited during the year and appointed with effect from 1 July 2009. Rod Varley resigned during February 2010.

Disciplinary Panel

The Disciplinary Panel had thirteen members for most of the year. Five Disciplinary Tribunals were held during the year, plus one meeting of the Appeal Tribunal. Tribunals are composed of a legally-qualified chairman, a member of the ATT or CIOT and another lay member. In addition, one member was appointed as a Disciplinary Assessor to consider a request for an appeal.

The members of the Panel, 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 2009</u>
Ken Ball	Lay	1 August 2003	1
Richard Barlow	Lawyer	1 September 2008	1
John Burrow	Lawyer	1 September 2008	1
Valerie Charbit	Lawyer	1 April 2009	1
Brian Cleave	Lawyer	1 January 2006	2
Julie Dingwall	ATT	1 October 2007	2
David Frost	CIOT	1 July 2009	0
Marjorie Kostick	CIOT	1 July 2009	1
Nick Lloyd	CIOT	30 May 2001	0
Peter Newman	Lay	15 March 2001	3
Angus Nicol	Lawyer	1 January 2006	1
William Silsby	CIOT	11 March 2008	2
Michael Squires	CIOT/ATT	15 March 2001	1
Emily Windsor	Lawyer	1 September 2008	1
Andrew Young	Lawyer	1 September 2008	1

The terms of Nick Lloyd and Michael Squires expired on 31 March 2009. Valerie Charbit was appointed with effect from 1 April, and two new professional members (David Frost and Marjorie Kostick) were appointed from 1 July. John Burrow resigned in April 2010 upon his appointment to judicial office.

In the course of 2010, the Board intends to recruit some new lay members to replace those due to retire in 2010 and 2011. New appointees will not be eligible to sit until they have first attended a training session. Meanwhile, in order to prevent a shortage of lay members, the appointments of Ken Ball and Peter Newman were extended during 2010 until new lay members have been appointed and trained.

GUIDANCE TO PANELS

Over the past year the Board has continued to prepare 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.

During 2008, guidance was issued, and published on the website, relating to the role of Investigatory and Disciplinary Assessors; the award of costs; and the imposition of fixed penalty orders. In 2009 further guidance was prepared, as described in the paragraphs below.

(i) Publication of Decisions

Guidance has been issued to members of the Disciplinary Panel regarding the publication of Tribunal decisions and the form such publicity should take. The Board starts from the general principle that any disciplinary finding made against a member will be published and the name of the member included in the publication of the finding. Such publicity is intended to reflect the public interest by demonstrating the transparency of the TDB's processes and reassuring the public that sanctions have been imposed against a member where a disciplinary charge has been proved.

Decisions made by the Investigation Committee are not publicised, although the complainant is always informed of the outcome of the complaint. Once a case is before the Disciplinary Tribunal, details of forthcoming hearings are published on the TDB website a week before the hearing, including the name of the member with brief details of the charges. Once the

Tribunal has reached its decisions, its findings will be published. If the charge is dismissed or an appeal by a member is upheld, the decision will be published, but without naming the member. Where a finding is made against a member, the decision and sanctions will be published, usually including the name of the member. The Tribunal has a discretion to order that the name of the member should not be published, but this discretion should be exercised sparingly and only in exceptional circumstances. (In 2009 this discretion was exercised in one case, involving a student member who had informed the TDB and freely admitted her breach of the rules and had not caused any harm by that breach.)

All decisions are published in the journal *Tax Adviser* and on the Board's website, where they will normally remain posted for a minimum of three years. After that period they will be removed, except that cases where the member has been expelled or suspended from membership will remain on the website indefinitely. In exceptional cases, the announcement may also be sent to other professional journals or the local paper for the area where the member lives or practises.

(ii) Exercise of Discretion

The Board issued a short guidance note to members of the Disciplinary Panel regarding the exercise of their discretion. A number of the Regulations provide that Tribunals may exercise their discretion. Such discretion is an important means whereby Tribunals can examine cases on an individual basis and reach their decisions in a way which takes account of the circumstances of each individual case. It is, however, important that tribunals exercise their discretion in a consistent manner and give reasons to explain why they have done so in a particular way. Tribunals are

required to take account of guidance issued by the Board (eg on awards of costs or publicising decisions). But if a Tribunal decides to exercise its discretion, for example by awarding less than the full amount of costs or by withholding the member's name from publicity, it should explain its reasons for doing so. The decision should be announced during the Tribunal hearing and included in the written report of its determination. The provision of reasons will be particularly relevant in the event of any subsequent appeal.

(iii) Checklists for Chairmen of Tribunals

The Board considered that it would be useful to prepare a short summary of the main points which the Chairmen of Tribunals should bear in mind during the course of a hearing. After consultation with panel members, the Board therefore issued during the year two checklists to serve as aide-memoires for those chairing Disciplinary Tribunals and Appeal Tribunals. The purpose of the checklists is to help Chairmen to conduct proceedings in a way which reflects good practice, delivers justice and demonstrates respect for the human rights of all the parties to the proceedings. The items set out in the checklists are drawn from the Regulations and reflect good practice. But clearly they may need to be applied with some flexibility in the circumstances of a particular case, where that would serve the interests of justice.

Each checklist fits on to two sides of paper and comprises 28 points of reference to be considered before, during and after the hearing.

(iv) Future guidance

Guidance is currently in preparation for the Investigation Committee on its decision-making processes. This guidance was prepared during 2009, but its distribution has been left until the revised Regulations are finalised in order to ensure that it takes full account of those amendments.

Another topic in preparation is the 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 guidance will be published on the Board's website.

TRAINING

One of the significant innovations over the past couple of years has been the introduction of regular training events for panel members. Newly appointed members are not allowed to sit on the Investigation Committee or on a Tribunal until they have received induction training. The Board also has a policy of providing at least one day's training each year for every member of the Investigation and Disciplinary Panels.

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

In June a day of induction training was provided for six new professionally-qualified members recently appointed to one of the panels. The event was led and facilitated by Mary Timms, a solicitor at Field Fisher Waterhouse. Mary Timms has wide-ranging experience in professional regulation, including the preparation and presentation of cases before disciplinary bodies, and has provided training for external committee members of many such bodies.

Topics covered during the training session included:

- Acting in the public interest
- Principles of fairness
- The Disciplinary Scheme and Regulations

- The role of the Investigation Committee:
 - The test for referral
 - Case law
 - Dealing with mitigation

- The role of the Disciplinary Tribunal
 - Standard of proof
 - Use of sanctions and costs orders
 - Relevant case law

- Structured decision making and giving reasons
- Case studies

In December a training and consultation meeting was held for all panel members. The aims of this session were to discuss members' experience of the new arrangements and to consider proposals for amendments to the Regulations. In the course of the year the Board had identified a number of changes needed in the Regulations and engaged counsel to draft a new set of Regulations. This meeting provided an opportunity for panel members to discuss the proposed changes and identify any additional points of concern.

Each panel met separately to discuss those issues most relevant to their particular areas of responsibility. The two panels then held a joint discussion to feed back on the earlier consultations. Among the issues discussed were the handling of different minor complaints against a member; the

possibility of introducing an interim suspension order where a member poses a significant risk to the public; the definitions of Inadequate Professional Service and Conduct Unbefitting; the appointment of a Second Investigation Committee in the event that the first committee is equally divided; the drafting of charges; the recovery of cost awards from recalcitrant members; and the desirability of detailed feedback for panel members on

Investigation Committee and Tribunal decisions.

Once again these training events have received highly positive feedback from the members who participated. A further training day is likely to be arranged later in 2010, and will include the new lay members whom the Board expects to appoint during the course of the year.

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

The Board's audit for the year 2007 was carried out by Alan Secker & Co. At the end of 2008, 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. A resolution to reappoint Hillier Hopkins LLP to carry out the audit for 2009 was adopted at the company's Annual General Meeting on 3 July 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 22 April 2010.

By order of the Board

N A Nagler - Company Secretary
23 April 2010

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

We have audited the financial statements of The Tax Disciplinary Board Limited for the year ended 31 December 2009 which comprise the Profit and Loss Account, the Balance Sheet and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards (United Kingdom Generally Accepted Accounting Practice).

This report is made solely to the company's members, as a body, in accordance with Sections 495 and 496 of the Companies Act 2006. 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

As explained more fully in the Directors' Responsibilities Statement set out on page 25, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. Our responsibility is to audit the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Auditing Practices Board's (APB's) Ethical Standards for Auditors.

Scope of the audit

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the company's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the directors; and the overall presentation of the financial statements.

Opinion on financial statements

In our opinion the financial statements:

- give a true and fair view of the state of the company's affairs as at 31 December 2009 and of its deficit for the year then ended;
- have been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice [applicable to Smaller Entities]; and
- have been prepared in accordance with the requirements of the Companies Act 2006.

Opinion on other matter prescribed by the Companies Act 2006

In our opinion the information given in the Directors' Report for the financial year for which the financial statements are prepared is consistent with the financial statements.

Matters on which we are required to report by exception

We have nothing to report in respect of the following matters where the Companies Act 2006 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept, or returns adequate for our audit have not been received from branches not visited by us; or
- the financial statements are not in agreement with the accounting records and returns; or
- certain disclosures of directors' remuneration specified by law are not made; or
- we have not received all of the information and explanations we require for our audit.

HILLIER HOPKINS LLP
Chartered Accountants,
Registered Auditor
64 Clarendon Road,
Watford,
WD17 1DA

Date: 17 May 2010

**INCOME AND EXPENDITURE ACCOUNT FOR THE YEAR ENDED
31 DECEMBER 2009**

	Note	2009	2008
		£	£
INCOME			
Contributions to expenditure from participating bodies	2	133,450	135,450
Fines, Costs and Fixed Penalty awards recovered		8,287	6,816
Bank interest		63	1,490
		<u>141,800</u>	<u>143,756</u>
EXPENDITURE			
Amounts payable to Directors	1.3	20,118	20,868
Amounts payable to Panel members		21,930	12,534
Salaries (including NI)		63,745	56,961
Postage, stationery, communications		1,522	1,595
Review of Scheme and Regulations		3,048	655
Legal costs		27,728	8,950
Training for panel members		9,038	19,765
Audit		1,668	1,668
Travel and meetings		7,041	3,109
Office and computer costs		784	1,948
Transcripts for tribunals		3,746	----
Recruitment		254	533
Insurance		1,650	1,387
Bank charges		29	29
Miscellaneous		176	174
		<u>162,477</u>	<u>130,176</u>
SURPLUS (DEFICIT) FOR THE YEAR		(20,677)	13,580
Less transfer to/ from participating bodies	6	20,677	(13,580)
		<u>-----</u>	<u>-----</u>
		<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 30 and 31 form part of these financial statements.

BALANCE SHEET AS AT 31 DECEMBER 2009

	Note	2009 £	2008 £
Current Assets			
Debtors	4	5,924	10,978
Cash at Bank		<u>13,000</u>	<u>31,590</u>
		18,924	42,568
Creditors			
Amounts falling due within one year	5	(18,924)	(42,568)
		-----	-----
Net Current Assets		=====	=====
Reserves			
Income and expenditure account		-----	-----
		=====	=====

The financial statements have been prepared in accordance with the special provisions relating to companies subject to the small companies regime within Part 15 of the Companies Act 2006, and with the Financial Reporting Standard for Smaller Entities (effective April 2008).

Approved by the Board of Directors and authorised for issue on 22 April 2010 and signed on its behalf by:

D Hudson
Director

P S Gravestock
Director

The notes on pages 30 and 31 form part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 DECEMBER 2009

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 April 2008).

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 Panel members for meetings and hearings held in the year.

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.

	2009	2008
	£	£
The Chartered Institute of Taxation (CIOT)	82,000	84,000
The Association of Taxation Technicians (ATT)	<u>51,450</u>	<u>51,450</u>
	133,450	135,450
Allocation of deficit / (surplus)	20,677	(13,580)
	<u>154,127</u>	<u>121,870</u>

3. Movements on the accounts with the participating bodies

	CIOT	ATT
	£	£
Balance as at 1 January 2009	(42,568)	10,978
Contributions	<u>(82,000)</u>	<u>(51,450)</u>
	(124,568)	(40,472)
Net Cost Allocations	<u>105,644</u>	<u>46,396</u>
Balance as at 31 December 2009	<u>£ (18,924)</u>	<u>£5,924</u>

4. Current Assets

	2009	2008
	£	£
The Association of Taxation Technicians--end-year balance	16,554	10,978
The Association of Taxation Technicians--capital payment	<u>10,630</u>	-----
	<u>£5,924</u>	<u>£10,978</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

	2009	2008
	£	£
The Chartered Institute of Taxation--end-year balance	11,424	42,568
The Chartered institute of Taxation--loan for working capital	7,500	-----
	<u>£ 18,924</u>	<u>£42,568</u>

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

6. Allocation of Surplus (Deficiency) for the year

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

	2009	2008
	£	£
Surplus (Deficit) for the Year	(20,677)	13,580
Allocated to the participant bodies:		
The Chartered Institute of Taxation	10,339	(6,790)
The Association of Taxation Technicians	<u>10,338</u>	<u>(6,790)</u>
	<u>20,677</u>	<u>(13,580)</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 19.

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 Page 20.) 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**

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