

# Investigation of Complaints Policy

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## Document properties

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## Associated regulations and policies

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<i>Code of Professional Ethics</i>	<i>Civil Sanctions Policy</i>
<i>Disciplinary Regulations</i>	<i>Disciplinary Sanctions Policy</i>
<i>AAT Regulations</i>	<i>Insolvency Policy</i>
<i>Licensing Regulations</i>	<i>Continuity of Practice Policy</i>
<i>CPD Policy</i>	<i>Clients' Money Policy</i>
<i>Appeals Regulations</i>	<i>Professional Indemnity Insurance Policy</i>
<i>Health and Disability Policy</i>	<i>Client Care Policy</i>
<i>Protected Characteristics Policy</i>	<i>Publication Policy</i>
<i>Indicative Sanctions Guidance</i>	<i>Complainants Policy</i>
<i>Criminal Convictions Policy</i>	<i>Disciplinary Hearings Policy</i>

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# 1. Introduction

- 1.1. As a professional accountancy body, AAT is committed to raising standards and upholding professional ethics within the accountancy profession. We protect the public interest by operating a transparent complaints procedure that allows us to investigate complaints received about the *members* who we regulate and their firms and take proportionate action where there is evidence that they have failed to maintain the high standards of professional conduct expected.

## 2. Scope and applicability

- 2.1. This policy applies to AAT *members* licensed to provide services to the public, and any such clients who are dissatisfied with the level of service they have received and want to escalate the matter to AAT to review the circumstances.
- 2.2. AAT is impartial and does not represent AAT members or complainants. Our responsibility is to look independently and objectively at the complaint on behalf of the public.

## 3. Purpose and objectives

- 3.1. We aim to ensure that all *members* are treated fairly and consistently in accordance with our compliance framework, while ensuring the public are protected. This policy sets out how AAT manages *complaints* received about the conduct of our members.
- 3.2. AAT may resolve these *complaints* informally or take disciplinary action where there is sufficient evidence of a failure to observe the standards expected of our members. However, given our purpose is to protect the wider public interest, AAT has no power to award compensation or any other monetary settlement. If you think you have a right to make a civil claim to seek compensation, then you should seek legal advice immediately.

## 4. Terms and definitions

- 4.1 The words and phrases set out in the following table only have the meanings set opposite them for the purpose of our regulations and policies as published by AAT from time to time in force.

Words	Meaning
<i>accountancy services</i>	Any or all services within the <i>Licence Tiers</i> as described in Schedule 1 of the <i>Licensing Regulations</i> .
<i>Appeals Committee</i>	A committee with a quorum of three consisting of two lay and one professional panellist convening to hear appeals under the <i>Appeals Regulations</i> .
<i>bookkeeping services</i>	Any or all services within <i>Licence Tier 4</i> only as described in Schedule 1 of the <i>Licensing Regulations</i> .
<i>client care</i>	The arrangements required of those holding a <i>licence</i> for ensuring proper standards of <i>client care</i> and service as detailed in AAT's <i>Client Care Policy</i> .
<i>complaint</i>	A complaint about a member to the effect that they have conducted themselves in a way which brings, or is likely to bring, discredit to the member, the accountancy profession, or AAT.

<i>Disciplinary Tribunal</i>	A panel with a quorum of three consisting of two lay and one professional panellist drawn from the pool of the <i>Disciplinary and Conduct Panel</i> to hear cases brought under the <i>Disciplinary Regulations</i> .
<i>Discipline and Conduct Panel</i>	The pool of suitably qualified persons appointed by AAT to act as panellists at hearings of the Disciplinary Tribunal and Appeals Committee
<i>evidence test</i>	The first test applied under the <i>Disciplinary Regulations</i> in considering whether to bring proceedings, which is whether, on the balance of probabilities, there is evidence to provide a realistic prospect that the member will be found guilty of misconduct, considering what the member's case in response may be and how that is likely to affect the case.
<i>firm</i>	A sole practitioner who is a <i>member</i> , or a partnership, or a body corporate or a limited liability partnership comprised in whole or in part of <i>members</i> , the business of whom or of which includes carrying on the profession of accountancy.
<i>investigation</i>	An investigation of a complaint of <i>misconduct</i> under the <i>Disciplinary Regulations</i> .
<i>Investigations Team</i>	A team, consisting of a member of Professional Standards and an appointed member of the Discipline and Conduct panel, who conduct investigations of complaints of misconduct and decide whether to refer such a complaint to a <i>Disciplinary Tribunal</i> under the <i>Disciplinary Regulations</i> .
<i>licence</i>	A licence to provide <i>accountancy and/or bookkeeping services</i> to the public under the <i>Licensing Regulations</i> .
<i>member</i>	A person admitted to the membership of AAT in accordance with the provisions of the <i>AAT Regulations</i> (where the context so permits), this term includes <i>associate members</i> , <i>full members</i> , and <i>fellow members</i> , whether past or present.
<i>misconduct</i>	A <i>member</i> committing any act or omission that falls short of the standards reasonably expected of them, including but not limited to those matters listed in the <i>Code of Professional Ethics</i> , which brings, or is likely to bring, discredit to the member, the accountancy profession, or AAT.
<i>Professional Standards</i>	The department of AAT responsible for investigating misconduct and bringing cases under the <i>Disciplinary Regulations</i> .
<i>Public interest test</i>	The second test applied under the <i>Disciplinary Regulations</i> in considering whether to make a referral of a complaint of misconduct to a Disciplinary Tribunal if it is in the public interest to do so (which for the avoidance of doubt shall not prevent any disposal of a complaint of misconduct by the Investigations Team). This interpretation is for the purpose of AAT's disciplinary framework only, it is not a definition of "public interest test" in more general terms.

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## 5. Policy detail

- 5.1. AAT will investigate *complaints* arising from the accountancy or bookkeeping services provided by a *member* only where there is at least prima facie evidence of *misconduct*.
- 5.2. UK legislation requires members providing accountancy services and/or bookkeeping services to operate an internal complaint handling policy. AAT will consider whether or not a member has been given an opportunity to resolve a complaint before it intervenes.
- 5.3. AAT will consider complaints if they are raised within 12 months of the alleged *misconduct*. If a complaint is received falling outside this period, only if exceptional circumstances exist and can be evidenced will the complaint be considered. An example might be where the complainant was unable to act because of illness at the relevant time in question. The 12-month provision excludes disclosures made by other regulators, professional bodies, crime agencies or authorities such as HMRC where AAT deems it to be in the public interest to consider these *complaints* on receipt of the information.
- 5.4. AAT will not consider complaints submitted in stages as it is important to be able to consider a member's overall conduct. Therefore, all complaints must be submitted to us at the same time, accompanied by supporting evidence. Awaiting the outcome of one complaint before deciding whether to submit others would be a misuse of AAT's complaints process and contrary to the public interest.
- 5.5. Where there is an external investigation underway, whether that be by HMRC, the courts or tribunals, other regulators or crime agencies, consideration of a matter pending the outcome of that investigation may be adjourned to ensure that any investigation by AAT does not prejudice the external investigation. In these cases, we will usually rely on the findings of facts and circumstances by those external bodies.

### **Matters which will not be investigated**

- 5.7 AAT will not investigate:
  - anonymous *complaints* unless there is independent evidence to support an allegation made.
  - if the *complaint* is vexatious, or a complainant is attempting to use the process to support or negate legal action.
  - if the complaint does not relate to any issue which AAT has power to regulate or decide upon.
  - disputes about fees, or complaints received because of the member starting debt recovery proceedings for non-payment of fees.
  - complaints where the complainant is seeking financial redress.
  - breach of contract, commercial or civil disputes not involving issues of professional competence or conduct.
  - disputes between employers and employees on employment issues.
  - issues not connected with the professional activities of the *member* (unless they are of such a serious nature that they would amount to *misconduct*).

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## Status of complainants

- 5.8 AAT will inform anyone who makes a complaint of the outcome. However, AAT will not consult complainants about decisions to investigate a complaint or the outcome reached, nor will the complainant be provided with any restricted information in respect of an investigation, such as case evidence, any correspondence we exchange with the member, investigation reports or written determinations. Additionally, complainants are not extended the right to be consulted about giving evidence or appearing before the *Disciplinary Tribunal or Appeals Committee*.
- 5.9 If a complainant is asked to be a witness for AAT where the *complaint* is referred to the *Disciplinary Tribunal*, AAT does not as a matter of course compensate witnesses for loss of earnings because of attendance at AAT hearings or otherwise participating in hearings.
- 5.10 While *complainants* have the right to be heard and understood, AAT requests all complainants behave reasonably in accordance with our *Complainants Policy*.

## Referrals

- 5.11 The conduct of a *member* may be referred to the *Disciplinary Tribunal* only if two tests are passed:
- a) the *evidential test*; and
  - b) the *public interest test*.
- 5.12 **The evidential test.** AAT must be satisfied that there is enough reliable evidence to provide a “realistic prospect” that the *member* will be found guilty of *misconduct*, considering what the *member’s* case in response may be and how that is likely to affect AAT’s case. A realistic prospect of a finding of *misconduct* is an objective test. It means that the *Disciplinary Tribunal*, properly directed in accordance with the law, is more likely than not to make a finding of *misconduct* against the *member*.
- 5.13 **The public interest test.** The public interest must be considered in each case when the evidential test has been satisfied. The factors for and against pursuing the case to the *Disciplinary Tribunal* must be balanced carefully and fairly. Public interest factors that can affect a decision to pursue the case usually depend on the seriousness of the *misconduct*, the impact on the public, and the circumstances of the *member* at the time the *misconduct* occurred. The latter point precludes consideration of economic factors, and is intended to allow consideration of health matters, as discussed in more detail in the *Health and Disability Policy* and the *Protected Characteristics Policy*.
- 5.14 For the avoidance of doubt, this does not prevent disposal of a complaint of *misconduct* under the *Disciplinary Regulations*, where an investigation can be discontinued on condition that the *member* agrees, by active or passive consent, to undertakings or to submit to any sanction available.

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## **Some public interest factors in favour of referral to the *Disciplinary Tribunal***

- 5.15 The more serious the alleged conduct, the more likely it is that a case will be referred to the *Disciplinary Tribunal* in the public interest. A referral is likely to be needed when:
- 5.15.1 there is evidence that the conduct was pre-meditated, repeated, systematic or otherwise dishonest
  - 5.15.2 the *member* abused a position of authority or trust
  - 5.15.3 a client's or other person's interests have been seriously compromised
  - 5.15.4 any victim of the *misconduct* was vulnerable
  - 5.15.5 the *misconduct* was motivated by any form of discrimination
  - 5.15.6 there are grounds for believing that the *misconduct* is likely to be continued or repeated
  - 5.15.7 there has been monetary loss or the reputation of AAT or its membership has been damaged
  - 5.15.8 the conduct undermines confidence in AAT's compliance framework, such as a failure by the *member* to deal properly with a client *complaint*, failure to cooperate with AAT, or failure to comply with a direction of AAT.

## **Some public interest factors against pursuing the referral to the *Disciplinary Tribunal***

- 5.16 Pursuing the matter to the *Disciplinary Tribunal* is less likely to be needed when:
- 5.16.1 the *Disciplinary Tribunal* is likely to impose no more than a nominal penalty
  - 5.16.2 the *misconduct* was committed because of a genuine mistake or misunderstanding
  - 5.16.3 the *member* is no longer practising and has expressed that they wish to resign from membership
  - 5.16.4 the *member* is suffering from significant mental or physical ill health, unless the *misconduct* is serious or there is a real possibility that it may be repeated
  - 5.16.5 the *member* has cooperated fully with AAT, by providing prompt redress
  - 5.16.6 there has been a long delay between the *misconduct* taking place and the date of the hearing, unless:
    - i. the *misconduct* is serious
    - ii. the delay has been caused in part by the regulated person
    - iii. the *misconduct* has only recently become known
    - iv. the complexity of the *misconduct* has meant that there has necessarily been a long *investigation*.



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