

Policy document

aat

# Insolvency

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# Insolvency

## Introduction

AAT expects its *members* to act with the highest levels of professionalism, both in and outside of their professional lives. Clients and employers rely on AAT to take ongoing steps to consider whether a *member* is, and continues to be, a *fit and proper* person to be a *member*. This policy and guidance is intended to support the AAT in meeting that obligation.

## The Association of Accounting Technicians

1. The Association of Accounting Technicians (AAT) upholds high standards of competence and professional conduct. Accountancy is a trusted and respected profession and AAT aims to ensure that *members*:
  - a) behave professionally and ethically
  - b) comply with *AAT Regulations* and relevant legislation
  - c) keep their skills and competence up to date.
2. In pursuit of that aim, AAT investigates *complaints* and *misconduct* allegations against AAT *members* and approved training providers. Depending on the circumstances, AAT may resolve these *complaints* informally or take disciplinary action.

## The compliance framework and procedures of AAT

3. AAT endeavours to ensure that all *applicants* and *members* are treated fairly and consistently in accordance with the compliance framework agreed by the *Council* so that users of *members'* services are protected and that the reputation of the profession is maintained. In developing its policies AAT has had regard to the principles of good regulation.
  - a) Proportionality
  - b) Accountability
  - c) Consistency
  - d) Transparency
  - e) Targeting
4. The compliance framework of AAT is governed by the AAT *Articles of Association* and sets out the following *Regulations* and guidance with which all *members* must comply:
  - a) *Code of Professional Ethics*
  - b) *AAT Regulations 2016*
  - c) *Disciplinary Regulations*
  - d) *Licensing Regulations*

5. The *Regulations* and guidance are underpinned by publications covering specific areas of compliance policy and related procedures which include (as well as this policy):
  - a) *Civil Sanctions* policy
  - b) *Criminal Convictions* policy
  - c) *Disciplinary Sanctions* policy
  - d) *Investigation of Complaints and Referrals* policy
  - e) *Disclosure* policy
  - f) *Health* policy
  - g) *Indicative Sanctions Guidance*
  - h) *Appeals Regulations*
6. These publications explain the processes by which our compliance policy is put into practice. All *members* and *applicants* for membership must be aware of and follow this guidance. Further information on the compliance framework is available at [aat.org.uk](http://aat.org.uk) including the purpose of each publication and how they relate to each other.
7. The website is the definitive guide to all policies currently in force.
8. In this policy all words and phrases in italics, save titles of publications, shall have the meaning set out in the *AAT Glossary*.
9. For the purposes of this policy, reference to *insolvency* includes both:
  - a) corporate *insolvency* – when an individual is or was a director of an entity which is or was insolvent as defined in the *Insolvency Act 1986*, including any modifications as detailed in the *Enterprise Act 2002*, or equivalent legislation in other jurisdictions.
  - b) personal *insolvency* – as covered by the *Insolvency Act 1986*, including any modifications as detailed in the *Enterprise Act 2002*, or equivalent legislation in other jurisdictions.
10. In addition to the circumstances specified in the statutes above, AAT also requires individuals to declare any County Court Judgments, and any breach of contractual payments to creditors which has not been remedied within one year of the date of first breach, including debt management plans. Any such declaration will be considered in accordance with this policy.

## Policy detail

### ***Insolvency on application***

11. AAT *members* must manage their financial affairs properly at all times to promote public confidence in the accounting profession. Being insolvent can indicate serious failures and call into question a *member's* competence in the handling of client financial affairs. Clients and employers rely on AAT to consider whether an *applicant* is a *fit and proper* person to be a *member*, whether applying to be an *associate member*, *full member* or *fellow member*.
12. *Insolvency* is a risk indicator, raising a question whether an individual is a *fit and proper* person to enter the profession. AAT has a robust approach to assessment of the *fit and proper* status of *applicants* who disclose they are, or have been, insolvent.
13. AAT will not normally approve an application for membership from an *applicant* with an undischarged bankruptcy or Debt Relief Order, for which the moratorium period has not expired.

14. In all other circumstances, unless stipulated in Schedule 2 to this policy, AAT will consider the following criteria in determining whether an *applicant* is a *fit and proper* person to be admitted to membership:
  - a) the type of *insolvency* declared
  - b) the amount of money owed at the point of *insolvency*
  - c) the circumstances surrounding the *insolvency*, including aggravating factors and mitigation
  - d) representations from the Insolvency Practitioner (where relevant)
  - e) the applicant's present circumstances
  - f) at least two character references
  - g) any other representations put forward by the *applicant*.
15. AAT's requirements for character references are detailed in Schedule 1 to this policy. Even if a character reference meets these criteria, AAT may still reject an *application*.
16. AAT may refer to information available in the public domain in making a determination as to an *applicant's fit and proper* status.
17. The test to be applied to the final determination whether an *applicant* meets the *fit and proper* requirements is whether the *applicant*, on the basis of their *insolvency*, or other declaration, and the circumstances surrounding it, would pose a risk to the public or is likely, by virtue of holding membership, to undermine public confidence in AAT or its *members*.
18. A number of circumstances exist whereby AAT can determine whether an *applicant* can be admitted as a *member*. These are detailed in Schedule 2 to this policy.
19. If, on *application*, an *applicant* fails to disclose *insolvency* which would, in AAT's opinion, be material to determination of their *fit and proper* status, and the matter subsequently comes to light, AAT may investigate in accordance with the *Disciplinary Regulations*.
20. AAT will reject an *application* for fellow membership if an *applicant* is insolvent, until such time as the *applicant* is solvent, at which point the *application* will be considered in accordance with paragraphs 11 to 19 above.

#### ***Insolvency on reinstatement***

21. AAT will consider *applications* for reinstatement of membership in accordance with the provisions detailed in paragraphs 11 to 20 above.
22. AAT will additionally pay due regard to the timing of the *applicant's insolvency* in the context of the *applicant's* membership history with AAT.
23. Where the information available demonstrates that the *applicant* had an obligation to disclose their *insolvency* to AAT in accordance with paragraph 24 below, but resigned or allowed their membership to lapse without notifying AAT, then their *application* for reinstatement will be rejected, and they will be debarred from making another *application* for a period of five years.

#### ***Insolvency whilst a member***

24. A *member* must notify AAT of *insolvency* within 30 days of the date of its occurrence. If a *member* does not do this, then the failure to notify will normally amount to *misconduct*, in accordance with Regulation 37 of the *AAT Regulations 2016*.

25. When a *member* discloses that they have been declared bankrupt, or entered into a Debt Relief Order, their membership will cease for a period of 12 months, or until discharge of the bankruptcy, or expiry of the moratorium period in the case of a Debt Relief Order (whichever is the longer period), at which date they may apply for reinstatement of their membership. Their *application* will be considered in accordance with paragraphs 11 to 19 above.
26. In all other circumstances, *insolvency* will be investigated in accordance with the *Disciplinary Regulations*.

#### ***Insolvency for those applying for, or holding, a licence***

27. It is a general condition of holding a *licence* under the *Licensing Regulations* that a *member* is not, and does not become, insolvent.
28. AAT will reject an *application* for a *licence* from any *member* who is insolvent when applying for their *licence*.
29. If a *member* holding a *licence* becomes insolvent, AAT may terminate the *licence* upon notification.
30. Upon termination of their *licence*, a *member* must not provide *self-employed accountancy services*.

#### ***Insolvency in other jurisdictions***

31. AAT recognises that some jurisdictions have different approaches to *insolvency*. As stated in paragraph 3 above, AAT seeks to treat all *applicants* fairly and consistently.
32. An *applicant* from a jurisdiction other than the UK will be required to disclose any comparable *insolvency* to the provisions detailed in the *Insolvency Act 1986*.

#### **Right of appeal**

33. *Applicants* have the right to appeal any decisions made under this policy. Appeals will be dealt with in accordance with the *Appeals Regulations*.

Attachments:

Schedule 1 – Requirements for character references

Schedule 2 – Delegated powers

## Schedule 1 - Requirements for character references

1. AAT will accept character references from the following, in order to support an *application* for membership:
  - a teacher or tutor who has taught the *applicant* for a minimum of six months
  - the *applicant's* employer, if they have known the *applicant* for a minimum of 12 months
  - a parole officer
  - a solicitor or barrister
  - someone who has supervised the *applicant's* work experience for a minimum of six months
  - a member of parliament.
  
2. AAT will not accept character references from:
  - a relative of the *applicant*
  - a friend of the *applicant*, unless they also meet one of the criteria outlined in point 1 above
  - any person known by the *applicant* solely on a social basis
  - anyone who has known the *applicant* for less than six months.
  
3. AAT requires the following criteria to be met in a character reference for it to be accepted:
  - it must be on letter-headed paper and it must have been written within the preceding six months of the date of application
  - it must make clear the capacity in which the referee knows the *applicant*, and the length of time they have known each other
  - it must explain why they consider themselves qualified to give the professional character reference
  - it must provide an explanation as to why the referee considers the *applicant* suitable to join AAT.

## Schedule 2 - Delegated powers

AAT may make the following decisions on suitability for membership, without remitting the *application* to a membership assessor, unless they consider there is good reason not to do so.

Category	Recommended outcome
Applications for membership	
Undischarged Bankruptcy/Debt Relief Order	Refuse membership
Discharged Bankruptcy/Debt Relief Order	Admit to membership
IVA, Debt Management Plan	Admit to membership if the following criteria can be satisfied: <ul style="list-style-type: none"> <li>• Evidence of 12 months of payments to creditors</li> <li>• Less than 12 months of payments remaining</li> </ul>
County Court Judgment (full, fellow and associate members only)	Case by case basis
Reinstatement (in addition to <i>application</i> permissions)	
<i>Insolvency</i> which arose whilst the <i>applicant</i> was a member, which was not disclosed in accordance with the <i>AAT Regulations</i> .	Refuse membership and debar from re-applying for a period of five years
Licences	
<i>Insolvency</i> (any type)	Termination of <i>licence</i>



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