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Disciplinary Regulations

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Disciplinary Regulations

Commencement

1. These *Regulations* were made by the Council on 20 November 2014 under Articles 23 and 65 of the *Articles of Association*.
2. These *Regulations* came into force on 1 May 2016 superseding all previous *Disciplinary Regulations*.

Definitions

3. In these *Regulations* all words and phrases in italics, save titles of publications, shall have the meaning set out in the *AAT Glossary*.

Function and scope of *Regulations*

4. Any *complaint of misconduct* shall be dealt with in accordance with these *Regulations* and the *Association's* policies and guidance on such matters published from time to time.
5. At any point before the service of a Notice of Hearing under Regulation 18 below, the *Investigations Team* may where it considers it appropriate to do so discontinue an *investigation of misconduct*.
6. The *Investigations Team* may agree with a *member* that an *investigation* be discontinued on condition that he or she agrees to undertakings or to submit to any sanction available under Regulation 31.

Investigations

7. The *Investigations Team* shall investigate any *complaint* received by the *Association* in accordance with the *Professional Standards Handbook*.
8. On conclusion of an *investigation*, the *Investigations Team* shall take into account all relevant evidence obtained, including any response by or on behalf of the *member* and shall determine whether the *complaint* meets the *evidential test* and the *public interest test*. If so, the *Investigations Team* shall refer *the complaint* to the *Disciplinary Tribunal* for hearing.

Proceedings before the Disciplinary Tribunal

Notice of allegations

9. Within 84 days of a decision to refer a *complaint* to the *Disciplinary Tribunal* under Regulation 8, *Professional Standards* shall serve on the *member* a written notice of allegations including:
 - a) a statement confirming that the case will be referred for consideration before the *Disciplinary Tribunal*;
 - b) full particulars of the allegation(s) against the *member*;
 - c) a summary of the facts and matters relied upon by *Professional Standards*;
 - d) copies of any evidence (including witness statements) that *Professional Standards* intends to rely upon in presenting the case;
 - e) copies of any other material in the *Association's* possession which might reasonably be considered capable of undermining the case against the *member*, or of assisting the case for the *member*, and which has not previously been disclosed;

- f) the names of any witnesses that *Professional Standards* intend to call in person to give evidence;
 - g) a copy of these *Regulations*; and
 - h) where applicable, notice of intention to make any application(s) at a *case management hearing* in accordance with Regulation 14.
10. Within 28 days of the date of the notice of allegations under Regulation 9, the *member* shall serve upon *Professional Standards* a response in writing stating which of the allegations set out in the notice of allegations are admitted (if any) and which (if any) are denied together with:
- a) in respect of any allegations which are denied, the reasons for the denial;
 - b) copies of any evidence (including witness statements) he or she intends to rely upon;
 - c) the names of any witnesses he or she intends to call in person to give evidence;
 - d) notice of whether the *member* intends to appear or be represented at the hearing, and if so, the name and address of any representative;
 - e) where applicable, notice of intention to make any application(s) at a *case management hearing* in accordance with Regulation 14; and
 - f) where applicable, any representations in response to any proposed application(s) intended to be made by *Professional Standards* at a *case management hearing*.

Joinder of cases

11. The *Disciplinary Tribunal* may hear:
- a) two or more cases against a *member* at the same time; or
 - b) cases against two or more *members* at the same time
- where it would be just to do so.

Conduct of hearings

12. All hearings shall be open to the public, save where the *chairman* considers that the particular circumstances of the case outweigh the public interest in holding the hearing or any part of the hearing in public.

Representation

13. a) The *Disciplinary Tribunal* (or *Regulatory Committee* member chairing a *case management hearing* under Regulation 15 below) shall give the *member* and the *presenting officer* and, at its (or his or her) discretion, any other person, the opportunity of being heard.
- b) The *member* and *Professional Standards* may instruct a legally qualified representative to present their respective cases.
- c) A *member* may also be represented by another *member* of the *Association*, or at the discretion of the *Disciplinary Tribunal* (or *Regulatory Committee* member chairing a *case management hearing*) any other person.

Case management hearings

14. The *Association* may on application by either party or of its own volition convene a *case management hearing* where it considers it will save time or costs or where it is in the interests of fairness to do so.
15. A *member* of the *Regulatory Committee* shall chair the *case management hearing*, assisted by a *Legal Assessor*.

Adjournments

16. At the request of either party or of his or her own volition the *chairman* of a *case management hearing* (prior to the service of a notice under Regulation 18) or the *chairman* of a *Disciplinary Tribunal* (after the service of a notice under Regulation 18) may, after consultation with the *Legal Assessor*, adjourn the hearing if satisfied that it is in the interests of justice so to do. An application for the adjournment of a hearing that has not been listed may be agreed between the parties.

Procedure before the *Disciplinary Tribunal*

17. The *Disciplinary Tribunal* shall determine its own procedure in accordance with these *Regulations* and the overriding requirement of fairness.
18. *The Association* shall serve upon the *member* at least 28 days' written notice of the date, time and place of the *Disciplinary Tribunal* hearing and as soon as it is practicable before the hearing, inform the *member* of the names of the members of the *Regulatory Committee* who will consider the case.

Absence of the *member*

19. If, at the hearing, the *member* is not present or represented, the *Disciplinary Tribunal* may proceed to hear the matter in the *member's* absence if it is satisfied that notice has been served upon him or her in accordance with Regulation 18 above.

Burden and standard of proof

20. The burden of proving the facts of the alleged misconduct shall lie upon *Professional Standards*.
21. The standard of proof shall be the balance of probabilities.

Evidence

22. The *Disciplinary Tribunal* may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law.
23. A conviction by any criminal court in the UK and the findings of fact by that court or the findings of fact of any civil court in the UK (including any court or tribunal exercising a professional disciplinary jurisdiction) may be proved by producing a certified copy of the conviction, order, finding or note of penalty in question and the findings of fact upon which the finding in question was based shall be conclusive proof of the facts or convictions so found.
24. The finding of and penalty imposed by any criminal or civil court (including any court or tribunal exercising a professional disciplinary jurisdiction) outside the UK may be proved by producing a certified copy of the conviction, order, finding or note of penalty in question and the findings of fact upon which the finding in question was based shall be admissible as proof but not conclusive proof of the facts in question.

25. The *Disciplinary Tribunal* may admit evidence adduced by a party notwithstanding that such evidence has not been disclosed to the other side in advance of the hearing if:
- a) the parties consent; or
 - b) after consultation with the *Legal Assessor*, it is satisfied that:
 - i. the admission of such evidence is necessary to ensure fairness of the proceedings and outweighs any prejudice to the party which has not previously seen such evidence; and
 - ii. there is a good reason why such evidence was not previously disclosed.

Order of proceedings

26. The order of proceedings for the hearing before the *Disciplinary Tribunal*, unless the *chairman* otherwise directs, shall be as follows:
- a) submissions by or on behalf of *Professional Standards*;
 - b) hearing of any witnesses called by *Professional Standards* followed by cross examination of such witnesses by or on behalf of the *member*;
 - c) submissions by or on behalf of the *member*;
 - d) hearing of any witnesses called by the *member* followed by cross-examination of such witnesses by or on behalf of *Professional Standards*; and
 - e) closing submissions by or on behalf of the *member*.
27. Members of the *Disciplinary Tribunal* may themselves at any stage question witnesses, parties or representatives as they think fit.
28. The witness statement(s) of any witness shall stand as evidence in chief unless the *chairman* otherwise directs.

Amendment of the allegation(s)

29. At any stage before making its findings of fact in accordance with Regulation 30 the *Disciplinary Tribunal* may amend the allegation(s) unless the amendment cannot be made without injustice.

Findings and sanction

30. At the conclusion of the hearing, the *Disciplinary Tribunal* shall proceed as follows:
- a) it shall consider and announce its findings on the facts and whether those findings amount to misconduct;
 - b) if it finds *misconduct*, the *Disciplinary Tribunal* shall then invite further submissions from both parties as to the appropriate sanction;
 - c) in the case of a finding of misconduct, the *Disciplinary Tribunal* shall consider and announce the sanction to be imposed, if any, with reasons;
 - d) the *Disciplinary Tribunal* shall then invite submissions from both parties as to whether the sanction should be imposed immediately, in default of which the sanction will take effect 28 days from the date of the notification of decision under Regulation 32.

31. The sanctions available to the *Disciplinary Tribunal* or which can be agreed with a *member* under Regulation 6 are that he or she:
- a) be expelled from the *Association*;
 - b) be suspended from the *Association*;
 - c) have *specific conditions* imposed on his or her *licence*;
 - d) receive a *reprimand* and/or *warning*;
 - e) receive a fine not exceeding the maximum figure set by the *Association* from time to time (and for the avoidance of doubt a fine may be imposed in combination with any other available sanction or on its own);
 - f) in the case of a *fellow member* have his or her *fellow member* status removed;
 - g) in the case of an *affiliate, associate member* or *student* that he or she:
 - i. be declared unfit to become a *full member*
 - ii. have his or her registration as a *student* withdrawn
 - iii. be debarred from sitting the *Association's* assessments for such period of time as shall be determined;
 - h) in the case of all *members* whether in combination with another sanction under this Regulation or where no sanction is imposed that:
 - i. he or she pay to the *Association* a sum in respect of costs not exceeding the maximum figure set by the *Association* from time to time; and/or
 - ii. he or she should seek advice as to his or her future conduct from such a source as may be recommended or prescribed.

Notification of decision

32. *The Association* shall serve on the *member* written notice of the decision of the *Disciplinary Tribunal* together with any sanction ordered as promptly as is practicable after the conclusion of the hearing and whether or not the *member* attended the hearing.

Recording

33. The proceedings before the *Disciplinary Tribunal* shall be recorded and a transcript shall be provided upon written request by the *member* and on payment by him or her of the costs involved.

Appeals

34. The *member* may appeal against any decision of *Disciplinary Tribunal* by sending a written notice of appeal accompanied by the appropriate fee to the *Appeal Secretary*, stating the matters relied upon in support of the appeal, within 14 days of the date of service of the notice under Regulation 32 on him or her.
35. Any appeal against a decision of the *Disciplinary Tribunal* shall be dealt with in accordance with the *Appeals Regulations*.

Service of notices/documents

36. Any notice or other documents required by these *Regulations* to be sent to or be served on a *member* may be delivered either personally or by post (save that any notice required to be served under Regulations 9 or 18 shall, if sent by post, be sent by special delivery or other form of recorded delivery if such service is available in the country of delivery).
37. Where any such notice or any document is served by post or special delivery, it shall be sent to the last address of the *member* which is recorded by him or her with the *Association* and it shall be deemed, wherever that address may be, to have been served on the second day following that on which it was posted unless at the place of receipt that latter day is a Sunday or a public holiday, in which case service shall be deemed to have occurred on the next working day.
38. Where the *Association*, the *Investigations Team* or *Professional Standards* (as appropriate) has reason to believe that the use of post and/or special delivery is likely to be ineffective, it may serve notices or documents by any or all other means available to it including e-mail and fax.

The Association of Accounting Technicians

140 Aldersgate Street

London

EC1A 4HY

t: +44 (0)20 7397 3000

f: +44 (0)20 7397 3009

e: aat@aat.org.uk

aat.org.uk