

# Professional Standards Investigations Policy

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## Document properties

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Version	V2.0
Owner / author	Professional Standards
Supersedes when issued	01 August 2021
Date of issue	01 December 2022
Circulation	<a href="http://www.aat.org.uk">www.aat.org.uk</a>
Format for circulation	Electronic (PDF); print as required.
Classification	<b>UNRESTRICTED</b>

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## Change control

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Version No.	Page	Changes made	Date
V1.0	5	Inclusion of AAT's definition of misconduct	09/06/2021
V1.0	6	Inclusion of direction that AAT will not consider complaints submitted in stages or where complainant is seeking financial redress	09/06/2021
V1.0	6	Explanation that AAT may adjourn an investigation where a matter is already being investigated under another jurisdiction.	09/06/2021
V2.0	6	Increase in complaint time period to 12 months set out in paragraph 11.	01/12/2022
V2.0	7	Update to status of complainants in paragraph 16.	01/12/2022

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## Associated regulations and policies

*Code of Professional Ethics*

*AAT Regulations*

*Disciplinary Regulations*

*Licensing Regulations*

*Insolvency Policy*

*Criminal Convictions Policy*

*Civil Sanctions Policy*

*Disciplinary Sanctions Policy*

*Disclosure Policy*

*Health and Disability Policy*

*Indicative Sanctions Guidance*

*Appeals Regulations*

*Continuity of Practice Policy*

*Professional Indemnity Insurance Policy*

*Client Care Policy*

*Clients' Money Policy*

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## 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 are intended to support the AAT in meeting that obligation.

## Scope and applicability

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.

## Purpose and objectives

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*
  - 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) *Insolvency Policy*
  - b) *Civil Sanctions Policy*
  - c) *Disciplinary Sanctions Policy*
  - d) *Criminal Convictions Policy*
  - e) *Disclosure Policy*
  - f) *Health and Disability 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.

## Terms and definitions

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

## Policy detail

9. AAT will investigate *complaints* arising from the services provided by AAT's *members* only where there is at least prima facie evidence of *misconduct* by a *member*. *Misconduct* is defined as Professional or personal conduct, in breach of the *Code of Professional Ethics*, which poses a risk to the public or is likely to undermine public confidence in the Association or its members.
10. UK legislation requires *members* providing *self-employed accountancy and/or bookkeeping services* to operate an internal *complaint* handling policy and AAT will take into account whether or not a *member* has been given an opportunity to resolve a *complaint* before it intervenes.
11. AAT will consider *complaints* if they are raised within 12 months of the alleged *misconduct*. If a complaint is received falling outside this time 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.
12. AAT will not consider complaints submitted in stages as it is important to be able to take into account 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.

13. 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**

14. AAT will not investigate anonymous *complaints*. However, AAT may consider doing so where there is independent evidence to support an *investigation*.
15. In other cases, if the *complaint* is vexatious or does not relate to any issue which AAT has power to regulate or decide upon, we will not investigate. For example:
  - a) disputes about fees or complainants seeking financial redress
  - b) breach of contract, commercial or civil disputes not involving issues of professional competence or conduct
  - c) disputes between employers and employees on employment issues
  - d) issues not connected with the professional activities of the *member* (unless they are of such a serious nature that they would amount to *misconduct*)
  - e) a complainant (or *member*) attempting to use the disciplinary process to support legal action.

#### **Status of complainants**

16. AAT will inform anyone who makes a *complaint of misconduct* that is investigated by the *Investigations Team* of the outcome of the *complaint*. Such a person may also be asked to be a witness for AAT if the *complaint* is referred to the *Disciplinary Tribunal*. However, AAT will not otherwise consult complainants about decisions to investigate or to refer *complaints*, nor will they be provided with any restricted information in respect of an investigation, such as case evidence, investigation reports or written determinations. Additionally, complainants do not have the right to be consulted about such decisions or to give evidence, appear at or be represented at any hearing before the *Disciplinary Tribunal* or *Appeals Committee*. AAT does not as a matter of course compensate witnesses for loss of earnings as a result of attendance at AAT hearings or otherwise participating in hearings.

#### **Referrals policy**

17. This policy should be read in conjunction with the *Disciplinary Regulations* in force from time to time.
18. 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*.

#### **The evidential test**

19. Professional Standards must be satisfied that there is enough evidence to provide a “realistic prospect” that the *member* will be found guilty of *misconduct*, taking into account 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*.

20. In deciding whether there is enough evidence to proceed, it must be considered whether the evidence can be used and is reliable.

### **The *public interest test***

21. The public interest must be considered in each case when the *evidential test* has been satisfied. A case will normally be referred to the *Disciplinary Tribunal* if a referral of a *complaint of misconduct* is likely to result in the *Disciplinary Tribunal* imposing a sanction greater than a *reprimand* and/or *warning* unless it is not in the public interest to do so. (This, for the avoidance of doubt, does not prevent disposal of a *complaint of misconduct* under Regulation 6 of the *Disciplinary Regulations*, where an investigation can be discontinued on condition that he or she agrees, by active or passive consent, to undertakings or to submit to any sanction available).
22. 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.
23. Examples of public interest factors, for and against referring a *complaint of misconduct* to the *Disciplinary Tribunal*, are set out in paragraphs 24 and 26 below. These are not intended to be exhaustive.

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

24. 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:
- a) there is evidence that the conduct was pre-meditated, repeated, systematic or otherwise dishonest
  - b) the *member* abused a position of authority or trust
  - c) a client's or other person's interests have been seriously compromised
  - d) any victim of the *misconduct* was vulnerable
  - e) the *misconduct* was motivated by any form of discrimination
  - f) the *member's* previous disciplinary history is relevant (see the *Disciplinary Sanctions* policy)
  - g) there are grounds for believing that the *misconduct* is likely to be continued or repeated
  - h) there has been financial loss or the reputation of AAT or its membership has been damaged
  - i) the *Code of Professional Ethics* has been breached and the breach is not minor in nature
  - j) 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 common public interest factors against pursuing the referral to the *Disciplinary Tribunal***

25. Pursuing the matter to the *Disciplinary Tribunal* is less likely to be needed when:

- a) the *Disciplinary Tribunal* is likely to impose no more than a nominal penalty
- b) the *misconduct* was committed as a result of a genuine mistake or misunderstanding
- c) the *member* is no longer practising and has expressed that they wish to resign from membership
- d) 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
- e) the *member* has cooperated fully with AAT, in particular by providing prompt redress
- f) 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 come to light
  - iv. the complexity of the *misconduct* has meant that there has necessarily been a long *investigation*.

**The Association of Accounting Technicians**

30 Churchill Place

London

E14 5RE

t: +44 (0)20 7397 3000

f: +44 (0)20 7397 3009

e: [aat@aat.org.uk](mailto:aat@aat.org.uk)

[aat.org.uk](http://aat.org.uk)