

aat

# Professional Standards Handbook

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# Professional Standards Handbook

## Introduction

This handbook is for staff of AAT's Professional Standards team. It provides guidance on the handling of cases where a question needs to be settled about an individual's suitability for admission to membership as well as ongoing membership when there has been a breach of AAT policies, regulations and/or relevant UK legislation.

Many issues of this kind are straightforward as AAT's regulatory framework provides default positions. For example, when a member discloses they have been declared bankrupt or have a debt relief order then their membership automatically ceases. However, there will be matters where you may need to exercise discretion in deciding the steps to take and this handbook will provide guidance on this.

Each section of the handbook tackles a particular subject area.

- Section 1 focuses on applications for membership. This includes those applying to be a student, affiliate, associate, full, fellow or licensed member. This section draws on information from the *Insolvency*, *Criminal Convictions*, *Civil Sanctions*, *Disciplinary Sanctions*, *Membership Criteria* and the *Licensing* policies. Where applicable, you will be given the default position for each policy and then guided on what matters to consider and the procedure to follow when exercising your discretion to accept or decline an application.
- Section 2 turns your attention to matters you will need to consider when an individual wants to reinstate their AAT membership.
- Section 3 will guide you through the default positions and the matters to consider when a member declares an insolvency, criminal conviction, civil sanction or disciplinary sanction by another professional body.
- Sections 4 to 7 focus on investigations under the *Disciplinary Regulations* as well as matters to consider when a member who is the subject of a complaint of misconduct wants to resign or reports an issue with regard to their health.

## How to use the handbook

Remember this handbook offers guidance. It should not be used to as a shortcut to knowing the policies that make up AAT's regulatory framework. You should always refer the policies for a definitive application of the regulations. If after reading the policies or this handbook you remain unclear about how to act in a given situation then do not guess. Speak to your colleagues or your manager.

## Keeping the handbook up to date

No handbook can foresee or address every issue which may arise. The handbook is a living document and we will develop new guidance in the light of experience. Please be on the lookout for ways in which we can add to the handbook, make it more clear, or improve it in any way.

## Commencement

This handbook came into force on 1 May 2016.

## Section 1 - Suitability for membership

AAT upholds high standards of competence and professional conduct. Accountancy is a trusted profession and AAT aims to ensure that members behave professionally and ethically and comply with AAT policies and regulations and relevant UK legislation.

In pursuit of that aim, we have a robust approach in considering whether an applicant is a fit and proper person to be a member, whether applying to be a student, affiliate, associate, full, fellow, or licensed member or applying to reinstate their membership.

We require applicants to be honest, open and to disclose their status with regards to matters concerning the following:

- insolvency
- unspent criminal convictions
- civil sanctions
- disciplinary sanctions made by another professional body.

Applicants must provide information to support their application. To corroborate any information they supply you can use information in the public domain (e.g. Companies House records; the Individual Insolvency Register; an internet search; press release, TV or radio programme) to help determine suitability for membership.

You should bear in mind that if you draw incorrect conclusions from any of the information you have, that is a ground for appealing the outcome of a suitability assessment. Therefore, if the information you have raises any questions, or leaves anything uncertain, you must address this by making further enquiries with the applicant or relevant third parties.

Each application must be assessed on its own merits. The test to be applied to a final determination is whether an applicant, on the basis of their declaration and the circumstances surrounding it, would pose a risk to the public or, by virtue of holding membership, is likely to undermine public confidence in AAT or its members.

Where applicable, you must also take account of an applicant's conduct during the suitability assessment. If an applicant indulges in behaviour that is abusive to AAT staff, for example, rude and aggressive comments and/or swearing, you must treat the incident as relevant to their suitability for membership, and evaluate it accordingly.

## Insolvency

AAT's *Insolvency* policy includes:

- corporate insolvency – where an individual is or was a director of an entity which is or was insolvent; and
- personal insolvency – covered in the UK by the Insolvency Act 1986, including any modifications as detailed in the Enterprise Act 2002, or equivalent legislation in other jurisdictions.

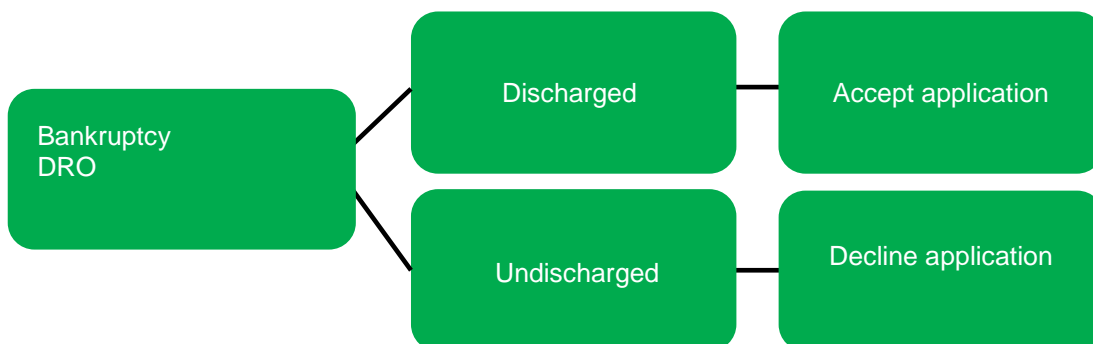
We require individuals to declare any insolvency on application. This includes:

- bankruptcy
- debt relief order (DRO), an alternative to bankruptcy for those who have relatively low liabilities, no real assets and little or no disposable income with which to make contributions to creditors
- County Court Judgments (CCJs)
- voluntary arrangements under the Insolvency Act 1986
- any breaches of contractual payments to creditors which have not been remedied within one year of the date of first breach, including debt management plans.

All declarations regarding the above are considered in accordance with the *Insolvency* policy.

Applicants from jurisdictions outside the UK must disclose any insolvency which is comparable with the provisions of the Insolvency Act.

## Bankruptcy and DRO



### Starting point

Under paragraph 13 and 28 of the *Insolvency* policy, the default position is that we decline applications for membership and applications for a licence where the individual is subject to an undischarged bankruptcy or DRO.

## Exercising discretion

Occasionally, mitigating circumstances will exist where you feel it would be unreasonable not to consider an application from an individual who is subject to an undischarged bankruptcy or DRO. In such an event the *Membership Criteria* and *Licensing* policies allows you to exercise discretion and consider such applications.

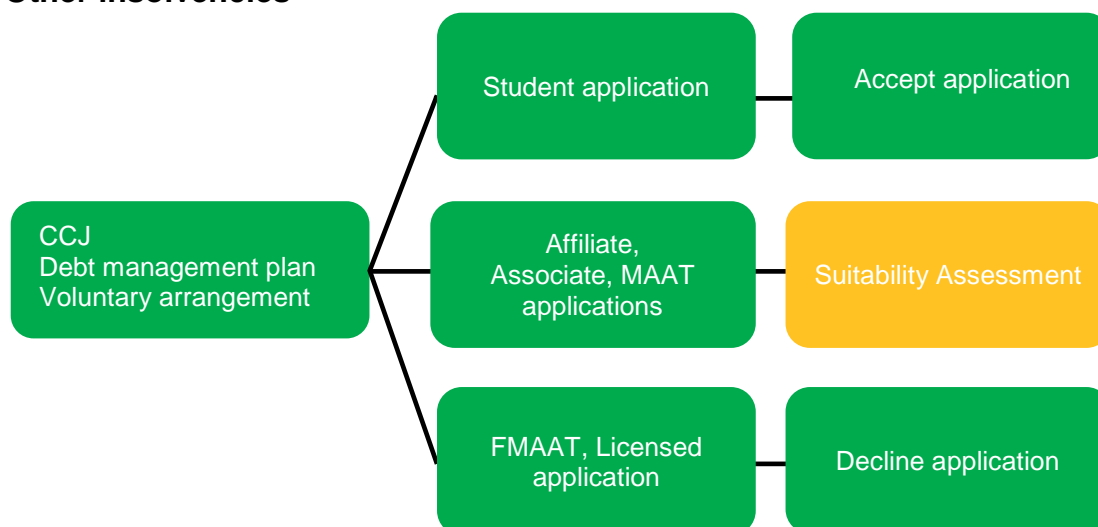
It is not possible to provide a complete list, but the following examples could, depending on the evidence, be regarded as “mitigating circumstances”:

- deterioration of physical health be it personal, a close relative or significant other
- significant adverse family circumstances
- an unforeseen event outside the applicant’s control
- behaviour by a third party which has an adverse effect on the applicant.

Applicants must fully explain their mitigating circumstances and provide supporting evidence; failure to do so means paragraphs 13 or 28 of the *Insolvency* policy automatically applies.

Where you propose admitting an applicant who is subject to an undischarged bankruptcy or DRO, you must remit the matter to a membership assessor for final determination.

## Other insolvencies



## Starting point

Where the insolvency declared on application is current, but does not concern an undischarged bankruptcy or DRO, the following applies:

- student applicants are admitted to membership
- affiliate, associate and full member applicants are either admitted or declined membership following a suitability assessment
- fellow and licensed applicants are declined unless you feel it would be unfair not to accept the application.

When assessing the information surrounding an application you should bear the following in mind:

**a) Type of insolvency**

We do not view one type of insolvency more or less favourably than any other.

**b) Amount owed**

An applicant declaring current insolvency must disclose the total amount, or an approximation, of money owed to their creditors at the point of insolvency; and also the amount still owed. A marked decrease between the two figures is an indicator that the applicant is actively working to address their debt.

**c) Continuous payments for a 12 month period**

An applicant declaring current insolvency must provide evidence which demonstrates they are actively engaged in addressing their debt. The individual must demonstrate continuous payments for a 12 month period immediately preceding their application. This can be demonstrated by way of bank statements showing regular payments to creditors or a debt counselling service. Alternatively, an applicant can provide representations from an Insolvency Practitioner which confirm the insolvency arrangement is proceeding satisfactorily.

**d) Mitigating factors**

Applicants must explain the circumstances surrounding their insolvency. If an applicant refers to mitigating circumstances then they must fully explain the circumstances and provide supporting evidence. Failure to provide evidence indicates that little weight should be attached to any declared mitigation.

**e) Two character references**

An applicant declaring current insolvency must provide character references. The referees must explain why they consider the applicant suitable to join AAT. The formal requirements for character references are detailed in Schedule 1 of the *Insolvency* policy.

**Exercising discretion**

Occasionally, mitigating circumstances may exist where you would consider it unfair to decline an application for fellow membership or a licence where the individual is insolvent. The *Membership Criteria* and *Licensing* policies allow you to exercise discretion and consider such applications. If you propose approving an application for fellow membership or a licence where the individual is insolvent, you must remit the matter to a membership assessor for final determination.

You have delegated powers to admit or decline applicants for full membership without referring the matter to a membership assessor. When using delegated powers, you may still encounter circumstances where you need to remit a matter to a membership assessor. Whilst not an exhaustive list such circumstances may include:

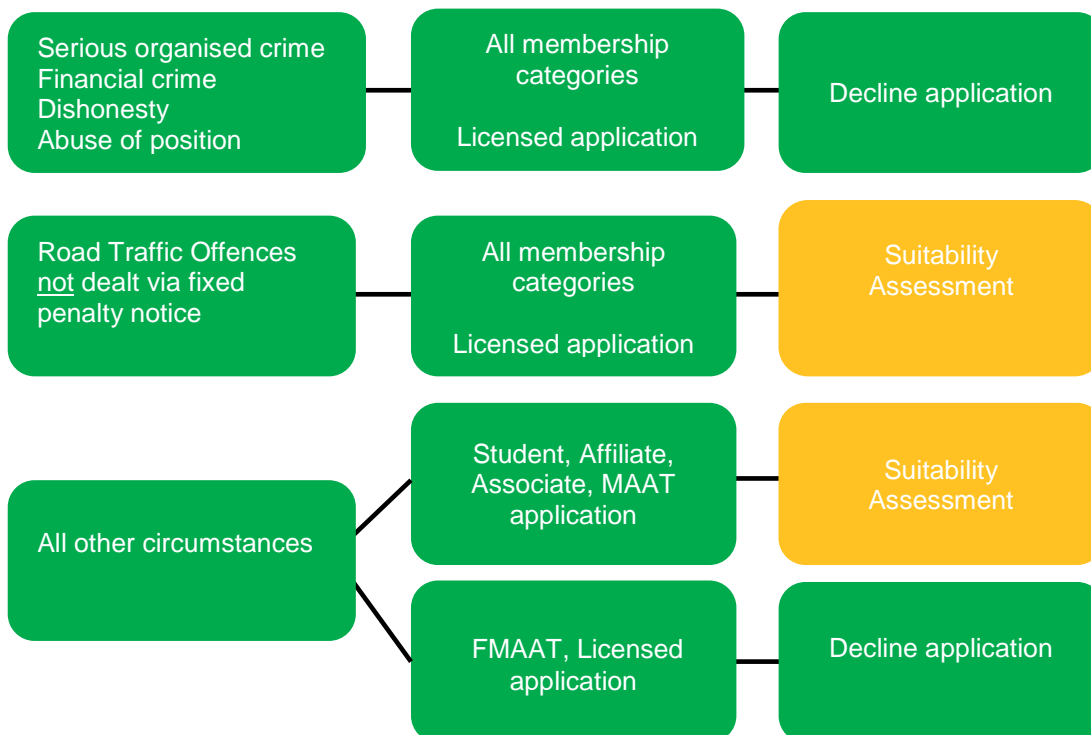
- evidence of 12 months' payment to their creditors but the applicant does not have a credible repayment plan in place
- evidence of 12 months' payment to creditors but the payments are not continuous
- the applicant has multiple voluntary arrangements but is unable to evidence 12 months' payment for one or more of the arrangements
- evidence reveals an act of dishonesty contributed to the applicant's insolvency.

## Criminal convictions

Under AAT's *Criminal Convictions* policy applicants need not declare spent convictions or unspent road traffic offences dealt with by a fixed penalty notice.

Where an *applicant* has been convicted of a criminal offence in a jurisdiction other than the UK the conviction must be declared. AAT, in deciding the applicant's suitability for membership, will make a decision on whether the offence leading to the conviction has any equivalence in UK law (e.g. convictions relating to political affiliations or those based on sexual orientation).

## Unspent convictions



## Starting point

Under paragraph 13 of the *Criminal Convictions* policy, the default position is that we do not approve applications for membership where the applicant is subject to an unspent criminal conviction which involves:

- serious organised crime, including drug offences, human trafficking and immigration offences, and/or offences under the Terrorism Act 2000
- financial crime, including money laundering offences, fraud and theft
- dishonesty
- abuse of position.

Where the criminal conviction on application relates to an unspent road traffic offence which was not dealt with by way of a fixed penalty notice, applicants are either admitted or declined membership or a licence following a suitability assessment.



In all other circumstances the following applies:

- student, affiliate, associate and full member applicants are either admitted or declined membership following a suitability assessment
- fellow and licensed applicants are declined unless you feel it would be unfair not to accept the application.

When assessing the information surrounding an application you should bear the following in mind:

**a) Nature of conviction**

Regardless of the nature of the criminal conviction you must be impartial and fairly consider all the information available.

**b) History of offending**

If an individual has a history of offending this could be an indicator that they will pose a risk to and undermine public confidence in the profession if admitted to membership or granted a licence. However, this must be weighed against the length of time since the convictions occurred as well as any evidence of rehabilitation.

**c) Mitigating factors**

Applicants are required to explain the circumstances surrounding their conviction. If an applicant refers to mitigating circumstances then they must fully explain these and provide supporting evidence. Failure to provide evidence indicates that little weight should be attached to any declared mitigation. It is not possible to provide a complete list, but the following examples could, depending on the evidence, be regarded as a “mitigating factor”:

- the applicant was under duress when the offence was committed
- the applicant played a relatively minor role in the offence
- evidence of provocation by the victim
- evidence the applicant made full restitution to or where relevant compensated the victim.

**d) Judge’s sentencing remarks**

Sentencing remarks by a judge are not required as a matter of course; however, there will be occasions when you may be assisted in having a better understanding of the conviction by the judge’s sentencing remarks. For example, if an applicant’s account of the circumstances leading to their criminal conviction does not match the seriousness of the offence detailed in information reported in the public domain then the sentencing remarks will help to address any discrepancies.

**e) Two character references**

Applicants must provide character references. The referees must explain why they consider the applicant suitable to join AAT. The formal requirements for character references are detailed in Schedule 1 of the *Criminal Convictions* policy.

## Exercising discretion

Occasionally, mitigating circumstances may exist where you would consider it unfair to decline an application for fellow membership or a licence where the individual has an unspent conviction. The *Membership Criteria* and *Licensing* policies allow you to exercise discretion and consider such applications. If you propose approving an application for fellow membership or a licence where the individual has an unspent conviction, you must remit the matter to a membership assessor for final determination.

You have delegated powers to admit an applicant for membership or a licence without referring the matter to a membership assessor where the applicant has:

- a single summary conviction
- an unspent motoring offence dealt with by way of a fixed penalty notice.

You can also decline an application without referring the matter to a membership assessor where:

- a conviction meets the criteria set out in paragraph 13 of the *Criminal Convictions* policy
- an applicant for fellow membership or a license discloses an unspent conviction (excluding a motoring offence dealt with by way of a fixed penalty notice).

In all other instances the matter must be remitted to a membership assessor for final determination.

## Civil sanctions

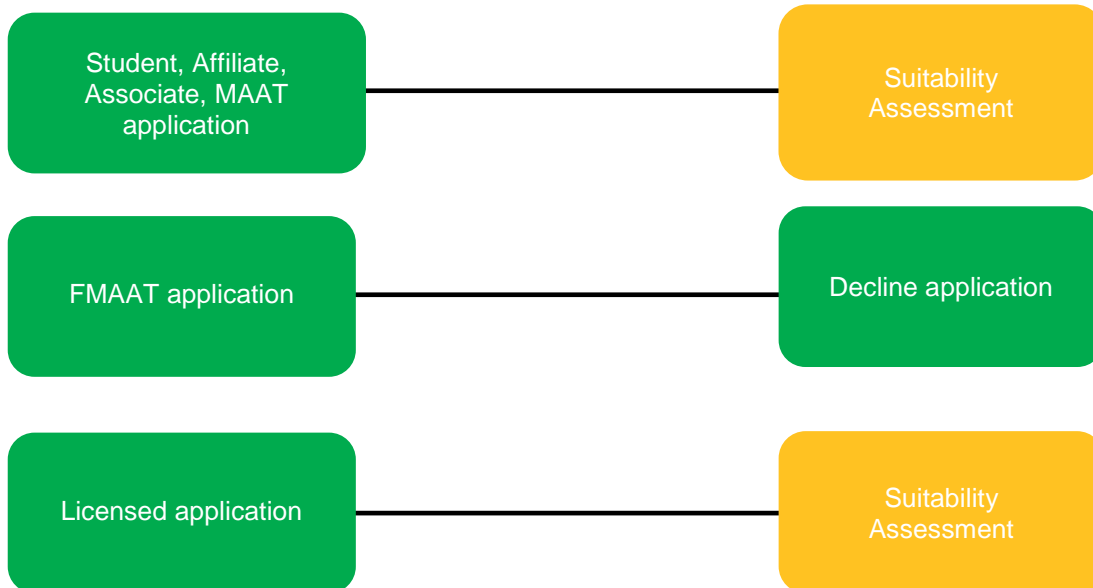
A civil sanction is a sanction for an offence created under specific statutes imposed by a competent court, tribunal or other administrative body. Examples are sanctions under the Money Laundering Regulations, Companies Act or Health and Safety legislation. Sanctions of this nature may not always result in a criminal conviction and may include fines, disqualification and formal warnings.

AAT's *Civil Sanctions* policy does not provide an exhaustive list of civil sanctions but the policy is intended to cover the following circumstances:

- disqualification as a company director
- a disqualification undertaking
- a bankruptcy restrictions order
- enforcement action taken by the Health and Safety Executive
- an anti-social behaviour order.

Where an *applicant* has been convicted of a Civil Sanction in a jurisdiction other than the UK the sanction must be declared. AAT, in deciding the applicant's suitability for membership, will make a decision on whether the offence leading to the Civil Sanction has any equivalence in UK law.

### Current civil sanctions



### Starting point

Under paragraph 20 of the *Civil Sanctions* policy, the default position is that we decline applications for fellow membership until the civil sanction has expired or has been complied with.

When assessing the information surrounding an application you should bear the following in mind.

**a) Whether the civil sanction is current**

A current civil sanction will necessarily call into question an applicant's ability to conduct themselves in a manner which would not prejudice their status as a member or reflect adversely on the reputation of AAT. Regardless of the nature of the underlying misconduct you must fully and fairly consider all the information available.

**b) Whether the civil sanction is expired**

If the civil sanction is expired you must still fully consider the nature of the sanction imposed and the circumstances leading to it.

**c) Nature of the civil sanction imposed**

Where applicable, the default positions in approving and declining applications under the *Insolvency* and *Criminal Convictions* policies must be maintained. For example, if an applicant discloses a civil sanction which relates to disqualification as a company director for fraudulent trading then it would be incompatible with paragraph 13 of the *Criminal Convictions* policy to approve an applicant for membership or a licence under the *Civil Sanctions* policy.

**d) Mitigating factors**

Applicants are required to explain the circumstances surrounding their civil sanction. If an applicant refers to mitigating circumstances then they must fully explain the circumstances and provide supporting evidence. Failure to provide evidence indicates that little weight should be attached to any declared mitigation.

**e) Representations from the body who imposed the civil sanction**

Representations from the body that imposed the civil sanction are not requested as a matter of course; however, there will be occasions when you must obtain this to help in determining admittance. For example, if an applicant's account of the circumstances leading to the civil sanction does not agree with information in the public domain then representations from the body that imposed the civil sanction will help in addressing any discrepancies.

**f) Two character references**

Applicants must provide character references. The referees must explain why they consider the applicant suitable to join AAT. The formal requirements for character references are detailed in Schedule 1 of the *Civil Sanctions* policy.

**g) Licensed applications**

When considering a licensed application in addition to the abovementioned criteria paragraph 28 of the *Civil Sanctions* policy states you must also consider the following:

- harm caused to the public as a result of the conduct leading to the civil sanction
- whether it was a corporate offence
- the nature of the services an applicant intends to deliver.

## **Exercising discretion**

The *Civil Sanctions* policy is silent on the matter of delegated powers. In light of the default position under paragraph 20 you can decline an application for fellow membership, without referring the matter to a membership assessor. In all other instances the matter must be remitted to a membership assessor for final determination.

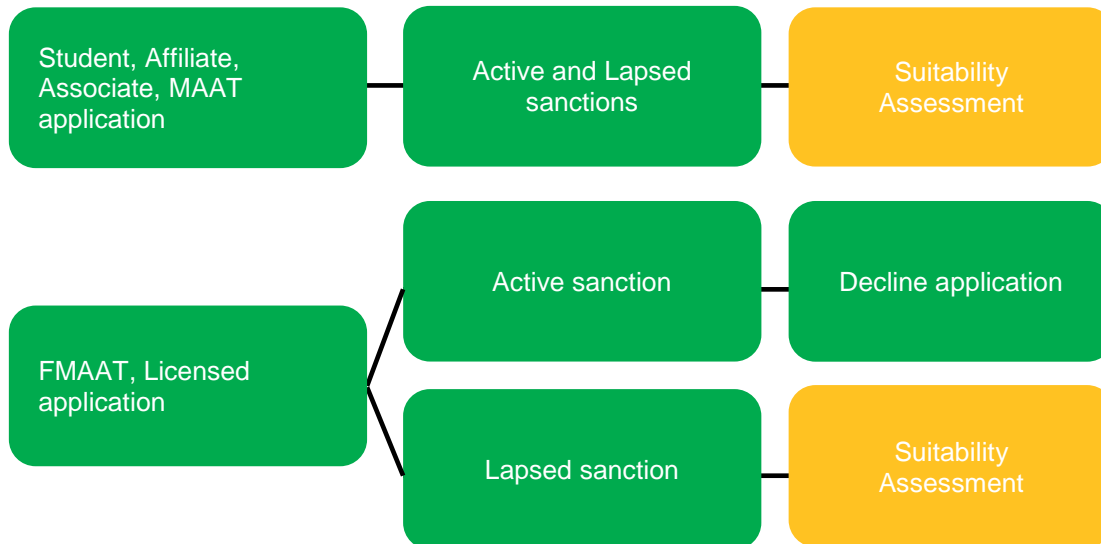
Occasionally, mitigating circumstances may exist where you would consider it unfair to decline an application for fellow membership because of a current civil sanction. The *Membership Criteria* policy allows you to exercise discretion and consider such applications. If you propose approving an application for fellow membership where the individual has a current civil sanction, you must remit the matter to a membership assessor for final determination.

## Disciplinary sanction by another professional body

The purpose of disciplinary sanctions imposed by a professional body is to protect the interests of the public; maintain public confidence in the profession; and maintain proper standards of conduct.

A disciplinary sanction is a risk indicator that an individual may not be a fit and proper person to work in the accountancy profession. On this basis, under AAT's *Disciplinary Sanctions* policy applicants are required to declare any disciplinary sanction made by another professional body.

### Active and lapsed disciplinary sanction



### Starting point

Under paragraphs 17 and 26 of the *Disciplinary Sanctions* policy, the default position is that we do not approve applications for fellow membership or a licence where the applicant is subject to an active sanction by another professional body.

When assessing the information surrounding an application you should bear the following in mind:

#### a) Whether the disciplinary sanction is active

Regardless of the nature of the disciplinary sanction you must be impartial and fairly consider all the information available.

#### b) Whether the disciplinary sanction is expired

If a disciplinary sanction is expired you must still fully consider the nature of the sanction imposed by the other professional body and the circumstances leading to it.

#### c) Nature of the disciplinary sanction imposed

Where applicable, the default positions in approving and declining applications under the *Insolvency*, *Criminal Convictions* and *Civil Sanctions* policies must be maintained. For example, if an applicant discloses a disciplinary sanction which relates to disqualification as a company director for fraudulent trading then it would be incompatible with paragraphs 13 of the *Criminal Convictions* policy to approve an applicant for membership or a licence under the *Disciplinary Sanctions* policy.

#### **d) Representations from the body who imposed the disciplinary sanction**

Representations from the body that imposed the disciplinary sanction are not requested as a matter of course. However, there will be occasions when you will want to obtain information directly from the other professional body to help in determining admittance. If the professional body requires the applicant's consent to release any data, and consent is not given, then paragraph 15 of *Disciplinary Sanctions* policy allows you to decline the application without further assessment.

#### **e) Two character references**

Applicants must provide character references. The referees must explain why they consider the applicant suitable to join AAT. The formal requirements for character references are detailed in Schedule 1 of the *Disciplinary Sanctions* policy.

#### **Exercising discretion**

The *Disciplinary Sanctions* policy is silent on the matter of delegated powers. In light of the default positions under paragraphs 17 and 26 you can decline an application for fellow membership and an application for a licence, without referring the matter to a membership assessor. In all other instances the matter must be remitted to a membership assessor for final determination.

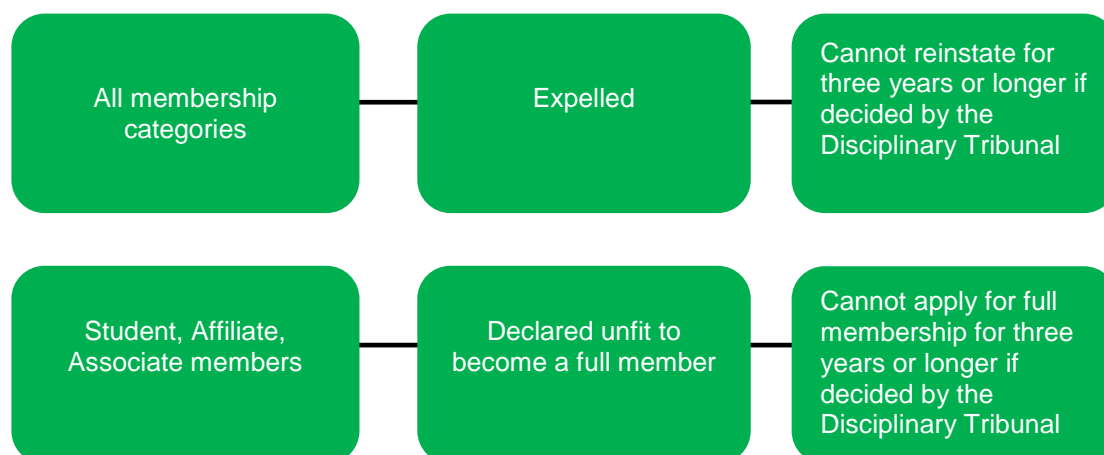
## Section 2 - Reinstating membership

An application for reinstatement of membership where the applicant discloses insolvency, an unspent criminal conviction, civil sanction or disciplinary sanction with another professional body, must be assessed in accordance with the relevant criteria discussed in the 'Suitability for membership' section of this handbook.

When assessing reinstatement applications you must bear in mind paragraph 22 of the *Disciplinary Sanctions* policy and paragraph 23 of the *Civil Sanctions, Criminal Convictions and Insolvency* policies. Under these paragraphs the default position is that an application will be rejected, and an individual debarred from applying for reinstatement for a period of five years where the information available demonstrates the applicant had an obligation to disclose their disciplinary sanction, civil sanction, criminal conviction or insolvency, but resigned or allowed their membership to lapse without notifying AAT.

If on the basis of the evidence you consider it would be unfair to apply paragraph 22 of the *Disciplinary Sanctions* policy and paragraph 23 of the *Civil Sanctions, Criminal Convictions and Insolvency* policies then the matter must be referred to a membership assessor for final determination.

### Reinstating following a disciplinary sanction



Under paragraph 39 of *AAT Regulations 2016* the default position is that no member who has been expelled under the *Disciplinary Regulations* is allowed to reinstate their membership until a minimum of three years have passed since the date of their expulsion. The Disciplinary Tribunal may decide to expel a member for a longer period. Should this be the case then the member cannot reinstate until after the end of the period prescribed by the Disciplinary Tribunal.

In the case of a student, affiliate or associate member who has been declared unfit to become a full member they are allowed to reinstate their student, affiliate or associate membership status. However, they cannot be admitted for full membership until after a minimum of three years have passed since they were initially declared unfit to become a full member. Again, the Disciplinary Tribunal may decide on a longer period than three years.



## Section 3 - Members' conduct

Once admitted as a member of AAT, individuals must abide by the provisions of the *Articles of Association*, the *Code of Professional Ethics* and all AAT regulations.

Members have a duty to maintain the integrity of and confidence in AAT and the accountancy profession. We expect members to be honest, open and to disclose any change in their circumstances with regard to matters concerning the following:

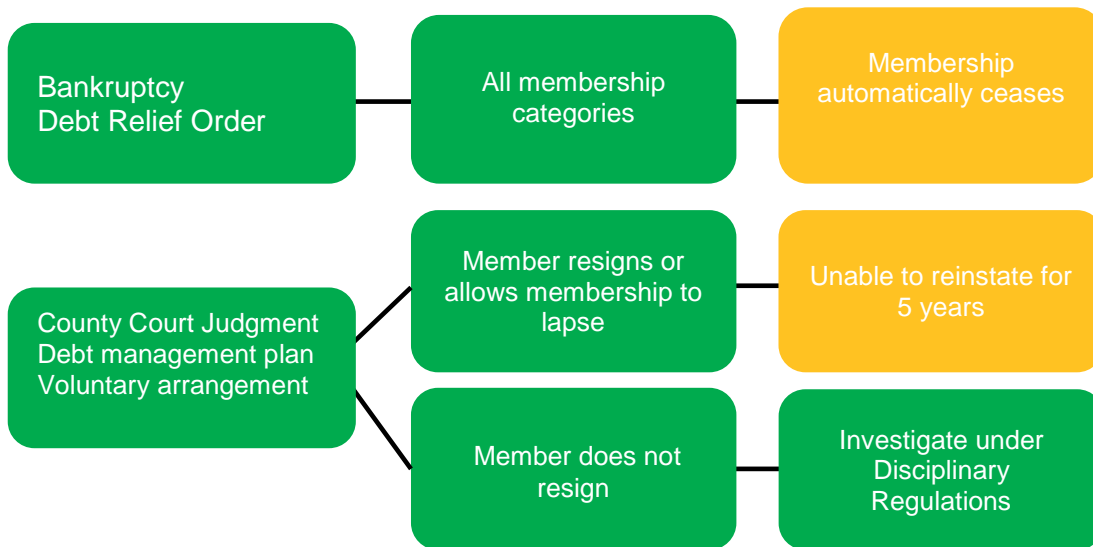
- insolvency
- criminal convictions
- civil sanctions
- disciplinary sanctions made by another professional body.

Members must provide information to support their disclosure. If the information you have raises any questions, or leaves anything uncertain, you must address this by making further enquiries with the member or relevant third parties. To corroborate any information supplied you can use information in the public domain (e.g. the Individual Insolvency Register; Trust Online; Law Pages; Companies House records; an internet search).

A member who becomes subject to insolvency, is convicted of a criminal offence, or receives a civil sanction or disciplinary sanction with another professional body, must notify AAT within 30 days of the event. Failure to do so automatically amounts to misconduct and must be dealt in accordance with the *Disciplinary Regulations*.

Paragraph 28 of the *AAT Regulations 2016* provides that a member whose conduct is being investigated under the *Disciplinary Regulations* will not normally be permitted to resign their membership until the matter is fully resolved. If a member's resignation is accepted, or the member allows their membership to lapse without notifying AAT, then they are normally debarred from applying for reinstatement for a period of five years. For further guidance in this area please refer to the section within this handbook entitled 'Resigning from membership'.

## Insolvency



### Bankruptcy and Debt Relief Order

Under paragraph 25 of the *Insolvency* policy, the default position is that when a member discloses they have been declared bankrupt or have a debt relief order (DRO) then their membership automatically ceases.

Once a member is able to demonstrate their bankruptcy or DRO has expired, and providing they meet the requirements of the *Civil Sanctions*, *Criminal Convictions*, *Insolvency* and *Disciplinary Sanctions* policies, then they can apply to reinstate their membership.

Where the insolvency does not concern a bankruptcy or DRO then the matter must be considered under the *Disciplinary Regulations*.

### County Court Judgments

When you are considering County Court Judgments (CCJ) under the *Disciplinary Regulations* the member must provide formal documentation from the County Court that shows the following:

- the judgment date
- the amount of the judgment
- the name of the Claimant(s).

In addition, the member must give a step by step account of the events that led to the CCJ. If a member refers to mitigating circumstances then they must fully explain these and provide supporting evidence. Failure to provide evidence indicates that little weight should be attached to any declared mitigation.

Under paragraph 24 of the *Insolvency* policy, a member must notify AAT of their CCJ within 30 days of its occurrence; failure to do so automatically amounts to misconduct. Should a member fail to notify AAT of their CCJ within the specified timeframe then they must also explain why. Occasionally, mitigating circumstances will exist which leads a member to inadvertently breach paragraph 24; therefore, asking for an explanation will ensure you provide a member with an opportunity to disclose such circumstances.

If the CCJ has been fully satisfied the member must provide documentary evidence to this effect. If it is not satisfied they must clarify when they will address the outstanding debt.

If the member had an administration order and is paying the CCJ over a period of time they must demonstrate they are actively engaged in addressing the CCJ. This can be done by way of bank statements showing payments to the Claimant(s) or the County Court. Alternatively, the member can provide representations from the Claimant(s) or the County Court, which confirms the CCJ is being addressed.

## **Debt management plan and voluntary arrangement**

When considering a debt management plan or voluntary arrangement under the *Disciplinary Regulations* the member must provide formal documentation of their plan or arrangement that shows the following:

- the start and end date of the plan/arrangement
- the amount owed at the start of the plan/arrangement
- a breakdown of what the debts consist of.

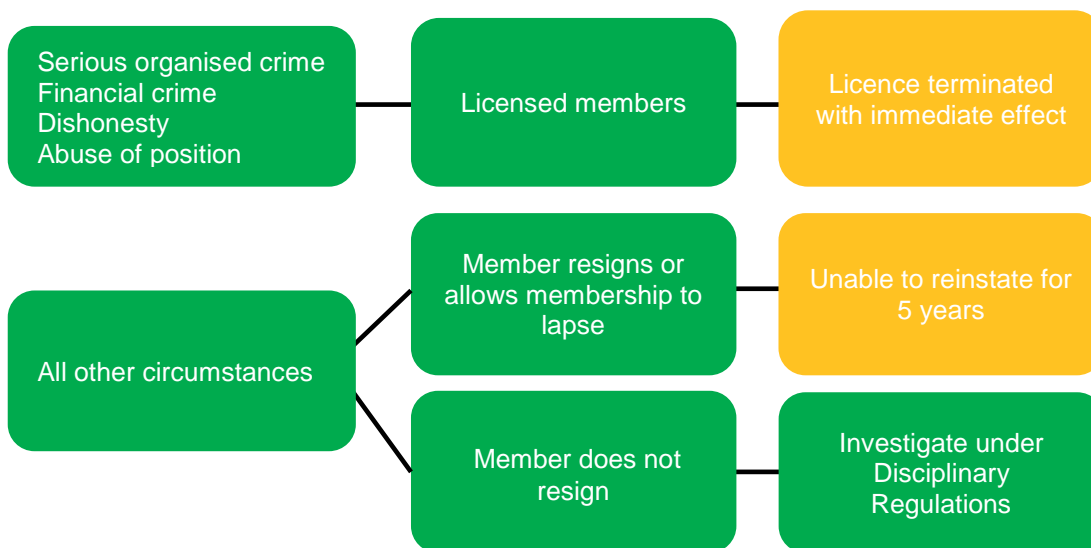
In addition, the member must give a step by step account of the events that led to their insolvency. If a member refers to mitigating circumstances then they must fully explain these and provide supporting evidence. Failure to provide evidence indicates that little weight should be attached to any declared mitigation.

Should a member fail to notify AAT of their debt management plan or voluntary arrangement within 30 days of its occurrence then in addition to the above they must:

- explain why they failed to disclose their insolvency
- confirm the amount they currently owe
- provide evidence which demonstrates they are actively engaged in addressing their debt.

A member can demonstrate they are actively addressing their debt by way of bank statements showing payments to creditors or a debt counselling service. Alternatively, they can submit representations from an Insolvency Practitioner which confirm the insolvency arrangement is proceeding satisfactorily.

## Criminal convictions



Under paragraph 29 of the *Criminal Convictions* policy, members who hold a licence will have their licence terminated with immediate effect where a criminal conviction involves:

- serious organised crime, including drug offences, human trafficking and immigration offences, and/or offences under the Terrorism Act 2000
- financial crime, including money laundering offences, fraud and theft
- dishonesty
- abuse of position.

In all other circumstances the disclosure of a criminal conviction must be considered under the *Disciplinary Regulations*.

When considering a criminal conviction under the *Disciplinary Regulations* the member must provide formal documentation, either from a court, their lawyer or the police, that shows the following:

- the court of conviction
- the date of conviction
- the offence committed
- the sentence received.

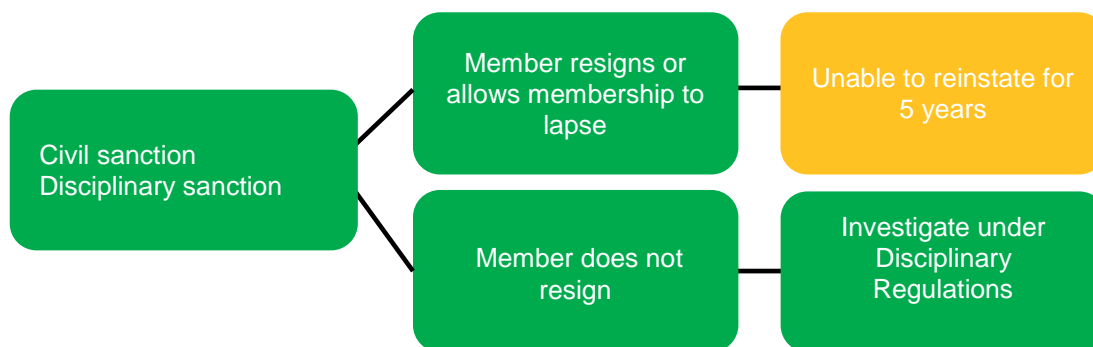
In addition to the above, the member must give a step by step account of the events that led to their conviction. If a member refers to mitigating circumstances then they must fully explain these and provide supporting evidence. Failure to provide evidence indicates that little weight should be attached to any declared mitigation.

Under paragraph 24 of the *Criminal Convictions* policy, a member must notify AAT of their criminal conviction within 30 days of its occurrence; failure to do so automatically amounts to misconduct. Should a member fail to notify AAT of their conviction within the specified timeframe then they must also explain why. Occasionally, mitigating circumstances will exist which lead a member to

inadvertently breach paragraph 24; therefore, asking for an explanation will ensure you provide a member with an opportunity to disclose such circumstances.

Sentencing remarks by a judge are not required as a matter of course; however, there will be occasions when you may be assisted in having a better understanding of the conviction by having this information. For example, if a member's account of the circumstances leading to their conviction does not match the seriousness of the offence detailed in information reported in the public domain then the sentencing remarks will help to address the discrepancies.

## Civil and disciplinary sanctions



When a member discloses they have been subject to a civil sanction or disciplinary sanction from another professional body then this must be investigated in accordance with the *Disciplinary Regulations*.

### Standard information

The member must give a step by step account of the events that led to their sanction. If a member refers to mitigating circumstances then they must fully explain these and provide supporting evidence. Failure to provide evidence indicates that little weight should be attached to any declared mitigation.

Under paragraph 24 of the *Civil Sanctions* policy and paragraph 23 of the *Disciplinary Sanctions* policy, a member must notify AAT of a civil or disciplinary sanction within 30 days of its occurrence; failure to do so automatically amounts to misconduct. Should a member fail to notify AAT within the specified timeframe then they must also explain why. Occasionally, mitigating circumstances will exist which lead a member to inadvertently breach paragraphs 24 and 23; therefore, asking for an explanation will ensure you provide a member with an opportunity to disclose such circumstances.

### Civil sanction

When you are considering a civil sanction under the *Disciplinary Regulations*, in addition to the standard information the member must provide formal documentation from the body that imposed the sanction. This evidence must show:

- the date the sanction was imposed
- the nature of the sanction
- when the sanction is due to expire.

## **Disciplinary sanction**

When you are considering a disciplinary sanction from another professional body in addition to the standard information the member must provide a copy of any correspondence that details the disciplinary outcome they received from the professional body and reasons for the decision reached.

## Section 4 - Investigations under Disciplinary Regulations

Accountancy is a trusted and respected profession and AAT expects members to behave professionally and ethically and comply with AAT policies, regulations and relevant UK legislation. In pursuit of that aim, any complaint or allegation of misconduct (“complaint of misconduct”) against AAT members must be treated seriously and investigated carefully.

Whilst not exhaustive the following are examples of how investigations under the *Disciplinary Regulations* can be instigated:

- a member failed to disclose insolvency, an unspent criminal conviction, civil sanction or disciplinary sanction when they initially applied for membership of AAT
- a member fails to notify AAT of insolvency, criminal conviction, civil sanction or disciplinary sanction within 30 days of the date of the event occurring
- re-investigation as a result of new information
- referral from AAT’s Malpractice Review Panel
- referral from another team within AAT
- alleged breaches of AAT policies, regulations and/or relevant UK legislation identified through a Practice Assurance Review
- information from another organisation (e.g. an accountancy body; the police; the Insolvency Service)
- reports from the general public
- anonymous tip-off or whistle-blower with independent evidence.

When investigating a complaint of misconduct you must be strictly neutral. You must consider all evidence, even evidence that may undermine your investigation. If the matter concerns a complaint about a member’s conduct you must not automatically side with either the AAT member or with the complainant. Your role is to be impartial and gather relevant information so that an Investigations Team or Disciplinary Tribunal can make an informed decision on whether AAT policies, regulations and/or UK legislation have been breached, and if, so how the matter should be addressed.

Occasionally, a complaint of misconduct will arise where you cannot intervene because the matter concerns an issue that AAT has no power to regulate. For example:

- disputes about fees
- breaches of contract or civil disputes not involving issues of professional competence or conduct
- disputes between employers and employees or personnel issues
- issues not connected with the professional activities of a member unless they are of such a serious nature that they could amount to misconduct
- attempts to use the disciplinary process to support legal action
- anonymous tip-off or whistle-blower with no independent evidence
- vexatious complaints; these normally stem from ill-feeling on the complainant's part rather than any genuine provable misconduct. In such cases you have a responsibility to protect members from malicious or unfounded allegations.

In addition to the above, you should bear in mind that AAT will normally consider complaints only if they arise within six months of the alleged misconduct occurring. However, if the complaint falls outside this timeframe then under paragraph 11 of the *Investigations of Complaints and Referrals* policy you have discretion to ask the Chair of the Investigations Committee (the Chair) to decide whether the complaint should be considered.

Before you refer a matter to the Chair, you must establish whether there are mitigating factors that prevented the complainant from reporting the matter to AAT within six months of the alleged misconduct. It is not possible to provide a complete list, but the following examples could be regarded as mitigating factors:

- deteriorating physical health be it personal, a close relative or significant other
- an accounting error has only come to light recently, for instance, HM Revenue and Customs deal with tax returns on the basis of "process now, check later". This has practical implications as an error may not be spotted immediately
- the matter could not be disclosed until legal proceedings or investigations with another organisation had concluded.

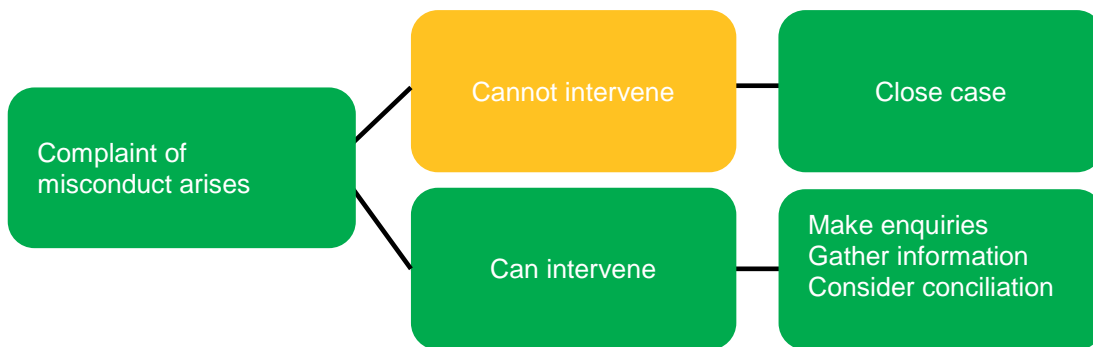
If there are mitigating factors the complainant must provide supporting evidence; failure to do so means the complaint has been brought out of time and cannot be considered.

It is important to highlight that in referring the matter to the Chair you are seeking permission only for the six month limit to be waived. You are not referring the matter for the Chair to determine whether there is misconduct. This will be established through the triage stages which are discussed in the following pages.

If the Chair does not waive the six month limit the matter must be closed with no further action.



## Triage Stage 1: Establish the facts



Upon receiving a complaint of misconduct you must first establish whether the matter concerns an issue that an Investigations Team, which consists of you and a member of the Investigations Committee, or a Disciplinary Tribunal, has power to regulate and decide upon. If there is no power to intervene then the matter must be closed as it is not possible to take any action under the *Disciplinary Regulations*.

If on the face of it the complaint of misconduct concerns a matter in which an Investigations Team or Disciplinary Tribunal can regulate and decide on then you should bear the following in mind:

### 1. Member's status

If a member is lapsed and the alleged incident occurred during their time as an AAT member then paragraph 20(1) of the *Articles of Association* provides that the member remains liable for their conduct prior to their resignation. Therefore, it is possible to pursue a matter under the *Disciplinary Regulations* where a membership has lapsed.

### 2. Make enquiries

Where, for example, a member informs AAT they have been convicted of a criminal offence then it will be clear that AAT policies and regulations have been breached. However, you may still need to make enquiries with the member or gather further information. You can gather information by whatever means you consider appropriate, for example, sourcing information from the public domain or relevant third parties. Where you source information from a member who is subject to a complaint then you must inform the member that your enquiries are in connection to a possible disciplinary proceeding and that any information they provide will be used should disciplinary proceedings be deemed necessary.

### 3. Conciliation

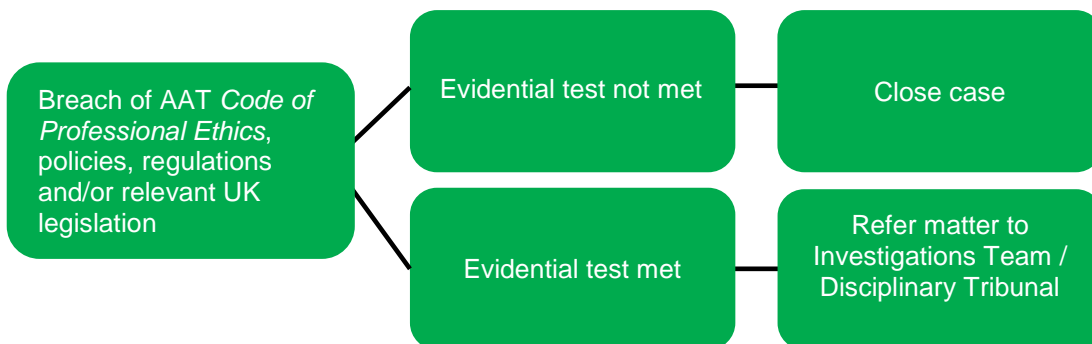
Where it is appropriate you can consider the possibility of resolving a grievance which is the subject of a complaint by conciliation. For example, if following enquiries with a member you discover the complainant has not given them an opportunity to address the complaint then you can attempt to help both parties reach an amicable agreement. However, you must remember that your role in the conciliation is strictly neutral. You may act only as a mediator between the complainant and the member and you must not put pressure on either party to accept terms they do not agree with.

#### **4. Other ongoing investigations**

If during the course of your enquiries you discover there are legal proceedings or other ongoing investigations, for example, with the police or another regulatory body, then you must stop your enquiries until the other matter is concluded. This is to prevent you inadvertently prejudicing legal proceedings or other investigations. You should, however, ask relevant parties to keep you updated on progress as this will enable you to resume your enquiries as soon as practical.

Triage Stage 1 concludes when you have gathered sufficient and reliable documented information to determine whether a member has breached AAT policies, regulations and/or relevant UK legislation. If you determine there is no breach then you should close the matter with no further action.

## Triage Stage 2: Meeting the evidential test



The conduct of a member may be referred to an Investigations Team or Disciplinary Tribunal only if the evidential test is met.

With the information you have gathered throughout Triage Stage 1 you must be satisfied that there is enough reliable evidence to provide a “realistic prospect” that the member will be found guilty of misconduct.

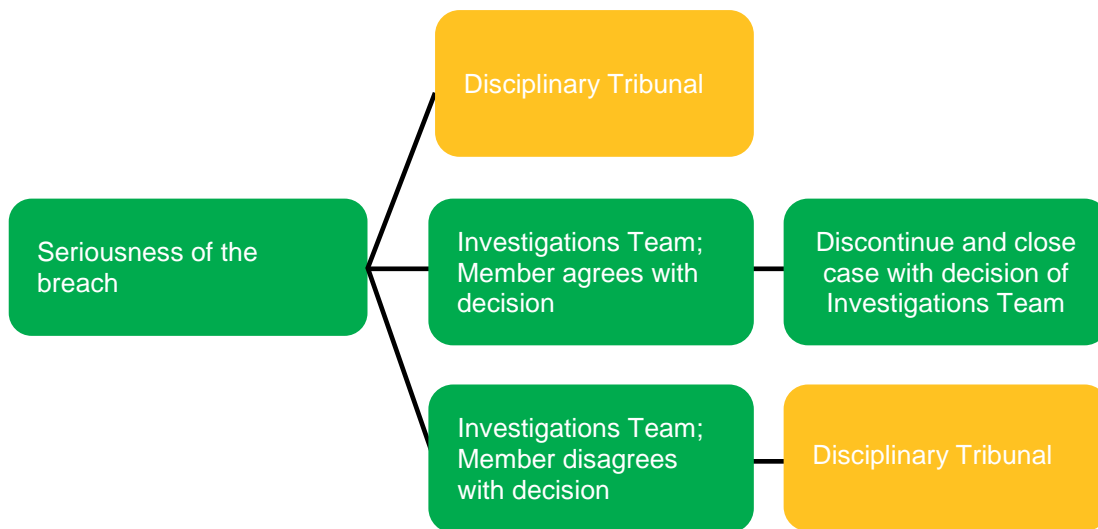
A realistic prospect of a finding of misconduct is an objective test. You should use the civil standard of proof, which is “the balance of probabilities”. This means there must be reliable evidence which demonstrates that it was “more likely than not” that misconduct took place.

Satisfying the evidential test is very important, especially in instances where you are dealing with complaints from an anonymous source or where a complainant or the member is not cooperative or has disengaged. If you do not have sufficient and reliable evidence, and you have exhausted all avenues of enquiry, then you must close the case with no further action. However, this does not prevent you from revisiting the matter should you receive further evidence in the future.

If you believe the evidential test is not satisfied you must remit the matter to a manager for final determination.

If the evidential test is satisfied then the matter must be referred to an Investigations Team or Disciplinary Tribunal for final determination.

### Triage Stage 3: Determination



Once the evidential test is satisfied you will need to consider the seriousness of the breach as well as the surrounding circumstances, and not just the member's actions in isolation. This will help you determine if it is in the public interest to refer the case to the Disciplinary Tribunal or whether you, as part of an Investigations Team, can decide on the matter.

Whilst not an exhaustive list matters which should be referred to a Disciplinary Tribunal are likely to involve the following:

- the member abused a position of authority or trust
- a client's or other person's interests have been seriously compromised
- the reputation of AAT or the profession has been seriously damaged
- the member's conduct undermines confidence in AAT's compliance framework

Matters which can be determined by an Investigations Team are likely to involve the following – again this is not an exhaustive list:

- the misconduct was committed as a result of a genuine mistake or misunderstanding, no third party was seriously affected and there is no real possibility the misconduct may be repeated
- the matters alleged are not serious and the member has expressed a wish to resign from membership
- there is evidence to confirm that the member is, or was at the time of the misconduct, suffering from significant mental or physical ill health. For further guidance in this area refer to the section in the handbook entitled Members' health.

As well as the above you should also bear the following in mind:

- each case must be assessed on its own merits
- an Investigations Team can agree with a member that an investigation be discontinued; however, this is on condition the member agrees to undertakings or any sanction available under paragraph 31 of the *Disciplinary Regulations*.
- before agreeing with a member to discontinue an investigation, an Investigations Team must disclose to the member all material that will be used as evidence, including any information that undermines the case. If for any reason you cannot disclose certain information the matter must be referred to a Disciplinary Tribunal as under paragraph 25 of the *Disciplinary Regulations* only a Disciplinary Tribunal may admit evidence which has not been disclosed.
- disciplinary decisions are published in accordance with the *Publication* policy. This helps to ensure that what you do is transparent. However, there may be factors that support an application not to publish; for example, where a decision cannot be published without disclosing confidential or legally privileged information.
- at any point before a notice detailing the date, time and place of a Disciplinary Tribunal hearing is served on a member, an Investigations Team may discontinue an investigation as previously stated.

## Section 5 - Proceedings for an Investigations Team

On deciding the evidential test has been met the following proceedings must be applied.

### **Notice of disciplinary action**

You must serve the member a written notice of disciplinary action including:

- a) full particulars of the allegation(s)
- b) copies of any evidence that an Investigations Team intends to rely upon
- c) copies of any materials which might reasonably be considered capable of undermining an Investigations Team's case
- d) copies of relevant AAT policies and regulations.

### **Representations**

Within the notice of allegation you must give the member an opportunity to respond to the allegation(s) and/or comment on the evidence. From the date of the notice of allegation the member must be given 21 days to submit any written representations.

To ensure the representations are received in the allotted timeframe you must instruct the member to send the representations direct to your attention.

If you receive the member representations outside the 21-day period it will be considered "late". If you receive late representations then you must use your discretion as to whether you will consider it.

If you do not consider late representations then you must inform the member in writing giving your reasons.

### **Further enquiries**

Upon receipt of the representations you may undertake further enquiries with the member or relevant third parties if you consider it necessary.

If you receive further information from a third party then, in the interest of fairness, this must be disclosed to the member and you must give the member an opportunity to comment.

You have discretion to set the time limit for receipt of the member's comments however it must not exceed 21 days.

## **Decision**

Before making a decision an Investigations Team may obtain advice and assistance from other members of the Investigations Committee and/or seek legal advice.

If an Investigations Team finds misconduct, as defined in the *AAT Glossary*, then it may either recommend imposing a sanction or refer the matter to a Disciplinary Tribunal.

If the Investigations Team determines that a matter is to be referred to a Disciplinary Tribunal then Professional Standards is required to comply with the relevant proceedings detailed within the *Disciplinary Regulations* for a Disciplinary Tribunal hearing.

## **Notice of decision**

If the Investigations Team recommend imposing a sanction(s) then you must serve the member and complainant (if applicable) written notice of the Investigations Team's decision. The notice must give the reason(s) for the decision reached.

With the exception of sanctions that impose *No further action* and *Seek advice over future conduct* you must give the member 21 days to submit their written consent or refusal of the Investigations Team recommended sanction(s).

## **Discontinue investigation**

If after serving the decision notice the member agrees to the recommended sanction(s) then you can discontinue the investigation.

If the member does not provide their written consent or refusal within the 21-day period then they are deemed to have consented. The recommendation of the Investigations Team will stand as an AAT Order and you can discontinue the investigation.

If applicable you must inform a complainant of the investigation outcome.

## **Refer to Disciplinary Tribunal**

If after serving the decision notice the member refuses to consent to the Investigations Team's recommended sanction(s) then you must refer the case to a Disciplinary Tribunal for a hearing.

If applicable you must inform a complainant that the matter is to be referred to the Disciplinary Tribunal and they may be required to provide a witness statement and attend the hearing.

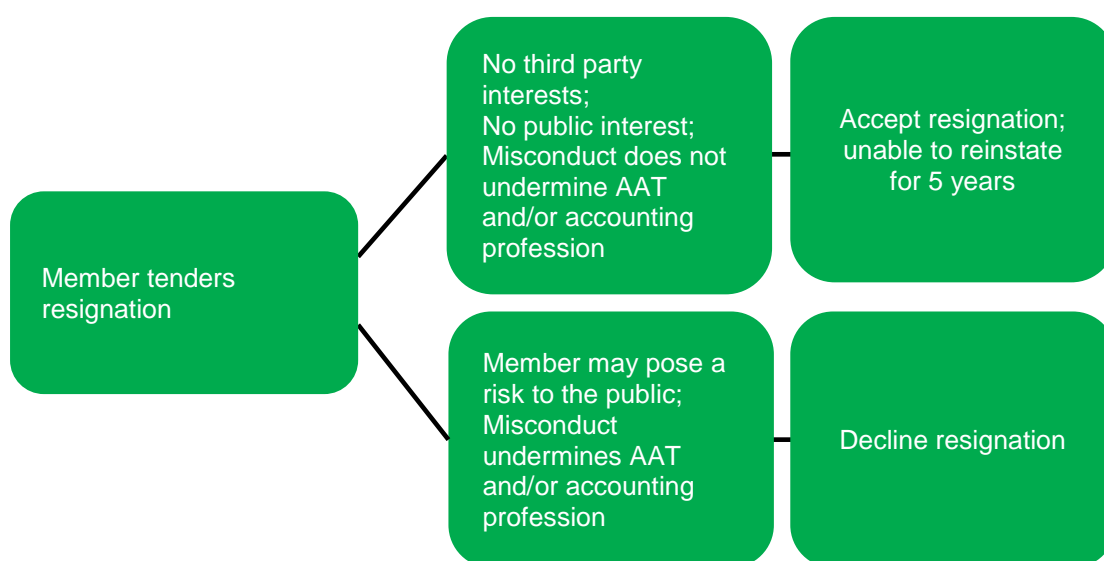
## **Publication**

With the exception of *No further action* and *Seek advice over future conduct* you must ensure that sanctions imposed by an Investigations Team or a Disciplinary Tribunal are published as soon as practicable. Please refer to the *Publication* policy for further guidance in this matter.

## Section 6 - Resigning from membership

The *Articles of Association* provide that any member can resign their membership by giving written notice. However, this provision must be weighed against paragraph 28 of the *AAT Regulations*. This paragraph stipulates that, unless otherwise determined by AAT, a member who is the subject of a complaint of misconduct under the *Disciplinary Regulations* shall not be permitted to resign from membership until the matter has been fully resolved.

### Resigning subject to the *Disciplinary Regulations*



It is not possible to give an exhaustive list of when it is appropriate to accept a member's resignation where that member is the subject of a complaint of misconduct under the *Disciplinary Regulations*. Each case must be judged on its own merits and you must remit the matter to a manager for final determination; however, you should bear the following in mind:

#### Third party interests

If a third party has been seriously affected by a member's conduct then in the interest of fairness it would be inappropriate to allow the member to resign until the matter is fully concluded under the *Disciplinary Regulations*.

#### Public interest

If the member's conduct is such that it could put the public at risk or undermine confidence in the accounting profession or AAT's compliance framework, it would be inappropriate to allow the member to resign whilst the matter in question remains unresolved.

#### Liability

Under paragraph 20(1) of the *Articles of Association* if a member resigns they remain liable for their conduct prior to their resignation. Therefore you may accept a member's resignation but continue to address the complaint of misconduct under the *Disciplinary Regulations*.



## **Reinstatement**

If you accept a member's resignation in these circumstances, then you must advise the member that they cannot reinstate their membership for five years. If the complaint of misconduct was not resolved under the *Disciplinary Regulations* then you must also inform the member that the matter will be fully explored if they apply to reinstate their membership in the future.

## Section 7 - Members' health

AAT has a duty to maintain public confidence in the accounting profession and ensure its members uphold proper standards of conduct and behaviour. There may be instances where a member's health comprises their ability to provide accountancy services to an acceptable standard or to comply with the *Code of Professional Ethics* and other standards set by AAT.

Where a member has reason to believe their health is affecting their ability to provide a good service or to comply with AAT's regulatory framework then the *Health* policy provides they must report this to AAT as soon as possible.

Where a member claims that a health condition is responsible for their non-compliance with AAT policies, regulations and relevant UK legislation then they must substantiate this with medical evidence. Failure to provide evidence indicates that little weight should be attached to their declaration.

If the member is the subject of a regulatory event, for example undergoing a Practice Assurance Review or allegations of misconduct going before a Disciplinary Tribunal, you must carefully scrutinise the evidence the member is relying on to explain their non-compliance. Such evidence must identify:

- the medical practitioner
- the member's health condition
- the features of the health condition which, in the medical practitioner's opinion, prevents or contributed to the member's non-compliance.

If the information you have raises any questions, or leaves anything uncertain, you must address this by making enquiries with the member. If you obtain the member's written consent first, you can approach their medical practitioner directly.

Once you have evidence of a health condition, you should consider the implications this may have for regulatory proceedings, bearing in mind factors such as the following:

- whether a member can or cannot participate in a regulatory event is not always a straightforward yes or no answer. There may be reasonable adjustments that can be made to enable effective participation. You should explore possible options with your colleagues and your manager
- carefully consider whether the identified condition impedes the member's ability to participate in the regulatory event. A letter from a doctor which confirms the member has been signed off work may not itself be an indicator of their inability to deal with disciplinary proceedings
- the question whether a member can effectively participate depends not only on the identified condition, but also what role the member is called to undertake. For example, if the member instructs a legal representative or an advocate during a disciplinary matter it may be possible to proceed despite the member's health. This would of course depend very much on the circumstances of the case
- save where the public interest strongly points to the contrary, it would be inappropriate to proceed with a regulatory event when you have evidence from a medical practitioner which clearly indicates a member is not fit to cope with it.

The above is not an exhaustive list, but it indicates that when carrying out your regulatory function you need to consider AAT's duty to safeguard members with ill health and weigh this against AAT's duty to protect the public and maintain confidence in the accountancy profession.

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