

Accounting Complaints and Discipline Hearings

Introduction

Complaints, across the whole spectrum from spurious to serious, are a part of professional life these days. Not welcome but a fact of business life to be dealt with. But the accounting profession is relatively lucky in dealing with complaints and discipline because these are still handled in-house by the various professional bodies (as against being handled by an outside regulator or quango).

This article gives a high-level view of the complaints process, with some hints and tips to consider. It gives a distillation of the main processes and common themes to complaints handling and discipline cases across the main accounting bodies, such as ICAEW, ACCA, CIPFA, CIMA, etc.

Initial Complaint and Institute Case

When a complaint is first received, mostly from an ex-client but not always, the temptation is either to treat it lightly, or take it too much to heart. Often an accountant's reaction is to brush off a complaint from a possibly disgruntled ex-client and not take it seriously. At the other extreme a complaint can be taken as a personal attack and the accountant reacts emotionally. Both understandable reactions but also wrong.

The best response to any complaint, no matter how seemingly trivial, is to treat it dispassionately as another business process, to be handled and monitored. One of the very first things to do is to notify the professional indemnity insurers. Both to make sure that cover if needed is in place from when it is needed and to avoid making any inadvertent concessions or statements which might be a problem later on.

Hopefully a well handled and pre-documented internal complaints process within an accounting firm can resolve most complaints at an early stage. In the event not then the relevant professional Institute becomes involved when a formal complaint is lodged with them.

It can also be that the complainer by-passes the accountant and goes direct to the Institute first. Or that the accounting Institute merely notifies the accountant while it considers matters. Sometimes there is an internal sift and plainly frivolous or ill-founded complaints are weeded-out by the Institute. If not the Institute will contact the accountant with the outline of the complaint, as made to it by the complainer, and asking for a response.

Responding to the initial case from the Institute is an important step. By this stage matters become quite legalistic or technical in terms of alleged misconduct, it is not often that a complaint turns just on an accounting interpretation. Getting involved in long exchanges of correspondence focusing on the alleged injustice or hurt caused is not helpful, even if easy to slip into. So it is vital the accountant's response both addresses and then answers the Institute's case in dispassionate and concrete terms.

This helps when the complaint and accountant's response are put to an internal committee, or similar, to decide if there should be a formal charge and prosecution.

Institute Charge and Case Preparation

The next stage, as the case progresses, is the Institute will draw up a formal written charge sheet of the complaint. This briefly sets out the Institute's case in terms of alleged facts and misconduct. This starts the count-down to the hearing, really a trial of the member's professional reputation.

The charge sheet is a vital document as it helps to focus and define the defence. In seeing what alleged facts the Institute relies on to prove its case against the accountant then knows what the issues are. This provides a framework for planning what facts the accountant needs to produce, either from documents or witnesses. Both to defensively counter the case against them and positively put forward their version of events. So for each issue the defence knows what it needs to be able to prove and can organise the documents or witnesses to show that.

Hearing

Conducting any legal hearing is hard, all the more so if the accountant does it themselves without outside help. Once again organisation is the key. After the charge is formally put the Institute leads its evidence, both witnesses and documents. In challenging, or cross-examination, the evidence against them a useful tip is for the accountant to have firmly in mind what they want to be able to say in their closing speech. So, there is no benefit in challenging an Institute witness on non-key points, worse to just argue with what they say. Cross-examine, never examine crossly. Again keep in mind that it is the Tribunal (Panel or Disciplinary Committee, terms vary) that needs to be won over, not the other side's witness.

In presenting the evidence for the accountant again organisation is vital. The key documents can be gone through at a high level in an opening speech, if they have not already been mentioned. In this way the Tribunal is already familiar with the accountant's key documents when their witnesses refer to them. The witnesses' evidence will be in a pre-prepared witness statement, which it is important reflects the witnesses own words and style, to make it easier for them when being asked questions.

The closing speech is the chance to bring together all the issues for the accountant and highlight the weaknesses in the Institute case and strengths for the accountant.

Eamon Mc Nicholas