

TAXATION DISCIPLINARY BOARD

GUIDANCE FOR INVESTIGATORY ASSESSORS

Under the Taxation Disciplinary Scheme Regulations 2008 (the “Regulations”), Investigatory Assessors may be appointed in a number of different circumstances. What these all have in common is the independent re-examination of a decision taken by either the Reviewer or the Investigation Committee.

The decisions that may result in the appointment of an Investigatory Assessor (IA) are set out in Regulations 3—6. Those decisions cover the situations described in the following paragraphs.

Decisions taken by the Reviewer

The initial consideration of every complaint received by the TDB is carried out by the Reviewer (currently the Executive Director of the Board). There are three kinds of circumstances in which the Reviewer may reject a complaint without processing it further.

(i) Time limits

Regulation 3.3 provides that a complaint that relates to conduct in which the most recent incident occurred or became known to the complainant more than twelve months earlier will normally be rejected. The only exceptions are where the Reviewer considers that:

- (a) there are issues of such public interest that pursuing the complaint is appropriate; or
- (b) the complaint is of sufficient importance or gravity that pursuing it is appropriate; or
- (c) there is a valid reason for the delay in bringing the complaint to the TDB.

Cases involving relatively trivial misdemeanours that do not raise any of these exceptions will normally be rejected if they do not fall within the 12-month period. But if the complaint seems serious or has any kind of public interest dimension, the Reviewer will normally pursue it. He may also do so if the complaint contains a number of ingredients, each of which may appear relatively minor but which cumulatively suggest some serious misconduct.

(ii) Lack of jurisdiction

Regulation 3.4 provides that a complaint should be rejected if it falls outside the jurisdiction of the Board. If, for example, the subject of the complaint is not, or is no longer, a member of one of the participant bodies, the TDB has no jurisdiction to deal with the complaint. In that event, the Reviewer has no choice but to reject the complaint.

(iii) Trivial or vexatious complaints

Regulation 3.5 provides that the Reviewer may take no further action if he considers that a complaint is vexatious or of such a minor character that it would not merit any of the sanctions set out in the Scheme. Rejection of a complaint on such grounds is likely to be unusual. Given the wide range of sanctions set out in the Scheme, few complaints are likely to be so minor as not to merit even the least severe sanctions, for example an apology or warning.

Sometimes a complaint may relate to an isolated occurrence which could never in itself be regarded as misconduct or inadequate professional service. For example, if the only ground for complaint was a small delay in replying to a letter or the temporary mislaying of a file, and this had no significant consequences, the Reviewer might well reject a complaint of this kind. The reviewer’s decision will also take into account whether the complainant had first

raised the matter with the member or his firm: the TDB should not normally be the first port of call where a matter does not amount to misconduct. Similarly, the Reviewer might well regard as vexatious a complaint received from someone who has made repeated complaints of a trivial nature or who persists in raising complaints against a member after similar complaints have already been rejected by an Investigation Committee or Disciplinary Tribunal.

Follow-up action

In any case which falls into one of the above categories, the Reviewer will write to inform the complainant of his decision and provide the reasons for his decision. The complainant may then give written notice to the Reviewer, within 14 days, that he wishes the complaint to be referred to an IA.

If the complainant makes such a request, the Reviewer will select a member of the Investigation Panel to reconsider the decision. The Assessor will be given all the correspondence between the complainant and the Reviewer. He will have two weeks in which to decide whether the Reviewer's decision was correct or whether the complaint should go forward to the Investigation Committee (IC). The IA must give written reasons for his decision and send these to the Reviewer, who will inform the complainant accordingly within 28 days of receiving the appeal. The IA's decision is final.

If the IA does not uphold the Reviewer's decision, the case will proceed to the IC in the normal way. The complaint will thus be sent to the member for his observations, after which the complainant will have an opportunity to comment upon the member's response, and any further comments made by the complainant will be sent to the member.

Decisions taken by the Investigation Committee

There are three grounds on which a decision reached by the IC may give rise to a request to appoint an IA to review that decision. These all entail a decision by the IC to take no action in relation to a complaint.

(i) No case to answer

Under regulation 5.4(a), the IC may find that a Prima Facie case has not been made out against the member and rule that the complaint be rejected.

(ii) Minor complaint

Under Regulation 5.4(b), the IC may find that a Prima Facie case has been made out, but the complaint is of such a minor nature that it would not merit any of the sanctions set out in the Scheme. In that case, the IC may rule that no further action be taken. Before doing so, the IC must take into account any previous occasions on which an IC had found a Prima Facie case against that member but had decided to take no further action.

(iii) Inadequate evidence

Under regulation 5.4(d), the IC may find that a Prima Facie case has been made out, but consider that the evidence is not of sufficient strength to establish a case of misconduct before a Disciplinary Tribunal. Cases falling into this category are likely to be fairly rare, as the IC would have to be satisfied that there is sufficient evidence to establish a Prima Facie case, whilst at the same time recognising that that evidence would not come up to the civil standard required for the Tribunal. If the IC has doubts about the strength of the evidence, it is more likely to conclude that a Prima Facie case has not been made out.

Follow-up action

In any case which falls into one of the above categories, the IC must provide written reasons. These are usually agreed by the members in the course of the meeting. The Board's Executive Director is responsible for informing both the complainant and the member of the decision and the reasons provided by the IC.

Any party objecting to the decision reached by the IC under one of the above categories may appeal to the TDB within 14 days of receiving the decision. In this context, the parties comprise the complainant, the member and the TDB itself. If an appeal is received, the TDB will select a member of the Investigation Panel who did not sit on the IC which heard the case. The Assessor will be given all the papers which were before the IC, together with the Committee's findings and its reasons. He will have two weeks in which to decide whether the IC's decision was correct or whether the complaint should be referred to a second Investigation Committee. If the Assessor considers the appeal to be frivolous or vexatious, he need not consider it further. The IA must give written reasons for his decision and send it to the Executive Director, who will inform the complainant and the member accordingly within 28 days of receiving the appeal. The IA's decision is final.

If the IA refers the case to a second Investigation Committee, the TDB will appoint its members from those members of the Investigation Panel who have had no previous involvement with the case. The second Investigation Committee will probably have three members, who will convene specifically in order to consider the complaint afresh. Its decision, with its written reasons, will be sent to the complainant and the member. The decision of the second Investigation Committee will be the final stage of the appeal process.

Role of the Assessor

Assessors will be selected by the Executive Director on a rotating basis, so that all members of the Investigation Panel will have an opportunity to undertake this role. Given the timescales set out in the regulations, Assessors will have approximately two weeks in which to consider the appeal and produce a written report. As indicated above, the IA will receive all the relevant papers from the Board's Executive Director. They will be required to reach their decision on the basis of those papers alone; there will be no scope for seeking additional information. But if the person appealing (whether member or complainant) has submitted additional material to the TDB, that will be available to the Assessor.

The function of the Assessor is to review the information and evidence and determine whether the decision reached by either the Reviewer or the IC was correct in the light of the Regulations and of the information available. There are no defined criteria for reaching that judgement. The Assessor is not, for example, required to decide that the decision was so perverse that no sensible person or committee could have reached such a decision. The Assessor is expected to use his experience and judgement to arrive at a reasoned decision. If he decides to uphold the appeal, he will need to be able to explain why the original decision was wrong and why he has arrived at a different decision.

For the assistance of panel members called upon to act as Investigatory Assessors, the proforma enclosed at Annex A has been prepared in order to assist in providing a framework for undertaking the assessment. A copy will be sent with each case referred to an Assessor.

TAXATION DISCIPLINARY BOARD

REFERRAL TO AN INVESTIGATORY ASSESSOR

This covering page will be completed by the TDB

Name of Assessor.....

Date of reference to Assessor.....

Date for return to the Executive Director.....

Case reference TDB/2008/.....

Name of complainant.....

Name of member.....

This appeal relates to a decision taken by the Reviewer/ Investigation Committee under Regulation..... The decision was made on.....

For further guidance, please refer to the Guidance Notes for Investigatory Assessors issued by the TDB in June 2008.

This form must be returned, together with all the case papers, to:

The Executive Director,
Taxation Disciplinary Board,
PO Box 544,
Pinner,
HA5 9EY

Please use First Class Recorded Delivery for the return postage. The cost should be claimed, with a receipt, on the TDB's expense claim form, together with your claim for the fee payable for this assessment (£100).

Case No TDB/2008/.....

REPORT BY INVESTIGATORY ASSESSOR

Decision of Assessor

Reasons for decision

Signed by Assessor..... Date.....

Continue on additional pages as necessary