

TAXATION DISCIPLINARY BOARD

GUIDANCE ON FIXED PENALTIES

Under the Taxation Disciplinary Scheme Regulations 2008, there is provision for the Board's Reviewer to apply a fixed penalty in circumstances where there has been a breach of the participants' administrative requirements, rules or procedures.

Background

The relevant provisions are set out at Regulation 3.11—3.15. These provide that if the Reviewer considers that the only complaints raised with him are breaches of the participants' administrative requirements, rules or procedures, he may impose a financial penalty on the member up to a maximum of £500 for each breach. This must be paid within 14 days, unless the Reviewer grants an extension. If the member objects to the decision, he may request in writing, within 14 days of notification of the decision, that the complaint be referred to a Disciplinary Tribunal. Such a request will have no effect unless it states the grounds under which the decision is to be reviewed. The only grounds under which such a request may be made are either:

- (a) that the decision of the Reviewer was unfair or unreasonable;
- or
- (b) that new evidence which could not have been produced when the Reviewer reached his decision has become available and that evidence would materially have affected the decision.

If such a case is referred to a Disciplinary Tribunal, Regulation 9 sets out a simplified procedure for taking the case forward.

Nature of administrative breaches

The main issue to be considered is what constitutes a breach of the participants' administrative requirements, rules and procedures. Many complaints of misconduct will entail some breach of the participants' rules, as set out in the Professional Rules and Practice Guidelines. All serious allegations of such breaches will be considered under the normal procedures of the Board for dealing with complaints, as described in Regulation 3.1—3.10.

The reference to administrative requirements, etc is intended to relate to breaches of provisions which have been introduced by the participants for the sound regulation of the profession and of the participants' membership, but which do not impinge directly upon the public. Such complaints will usually be referred by one of the participants, having discovered that the member may have failed to take some action required under its internal regulations.

The following are examples of the kind of complaint that may be regarded as an administrative failure:

- (a) Failure to submit a record of CPD (continuing professional development) when requested by a participant;
- (b) Failure to undertake or complete the required amount of CPD hours;
- (c) Failure to carry or renew professional indemnity insurance (PII) for a short period;
- (d) Minor infringement of the rules governing the designation of firms as Chartered Tax Advisers;
- (e) Failure to have in place all the administrative procedures required to ensure Anti-Money Laundering Compliance;

- (f) Failure to notify the participant that disciplinary proceedings have been initiated or completed by another professional body to which the member belongs.

This is not intended to suggest that such failings are trivial. Each complaint will need to be examined on its merits. But it is important that complaints be dealt with proportionately. The availability of fixed penalty arrangements is intended to provide a quick and effective remedy for what are essentially minor failings which are largely of an administrative character. These may often arise through ignorance or inadvertence. If, for example, a member had practised for many months without carrying PII, that would be a serious disciplinary failing, since it would be likely to put at risk members of the public; it would therefore be dealt with as a normal complaint. By contrast, if the member had delayed in renewing his insurance cover for only a few days and quickly rectified the situation, without any claims being affected, that could be regarded as an administrative breach.

Cases of failing to notify disciplinary proceedings have regularly been considered by the TDB. Such cases are usually referred by the participants and have hitherto been considered by the Investigation Committee; under the previous Scheme they would usually result in a decision to take no further action or a proposal for a consent order; few, if any, such cases were referred for a disciplinary hearing. Under the new Scheme, there is no scope to propose a consent order. It is therefore proposed that where the disciplinary proceedings of the other professional body do not involve tax and where the member has apologised for or explained his failure to notify the participant, this should be dealt with by means of a fixed penalty. However, if the case does involve tax or there is a clear risk to the public, the case will go to the Investigation Committee to consider whether further disciplinary action is appropriate.

Size of fixed penalty

It is envisaged that for a first offence the penalty would be £150 for a straightforward case of a single breach and £200 for a more complex case. This would be made up of a fine of £100, plus either £50 or £100 for the time spent by the Reviewer in processing the case.

For a second similar offence within a five-year period, the fine element would be doubled, giving a penalty of £250 for a straightforward case or £300 for a complex case.

These figures would be applied to each individual breach referred to the TDB.

If there were a third offence by a member within a five-year period, the complaint would go forward in the normal way to the Investigation Committee to decide upon any further disciplinary action.

Conclusion

This guidance will be applied by the Reviewer, and will come into effect as soon as it has been approved by the Board. If further experience in examining complaints discloses further examples of the kind of case where a fixed penalty may be appropriate, this guidance will be reviewed accordingly.