

**TAXATION
DISCIPLINARY
BOARD**

The Taxation Disciplinary Board

Sanctions Guidance: publication of draft for comment

The Taxation Disciplinary Board (TDB) has published for comment a revised and consolidated document 'Indicative Sanctions Guidance' (the Guidance). In it, the TDB sets out the range of issues ('Categories of Complaint') likely to come before the TDB's Disciplinary and Appeal Tribunals ('the Tribunal') and gives guidance to the Tribunal for when they are considering which sanction(s) to impose upon an individual or firm against whom a finding has been made. The Guidance has been prepared following an initial consultation exercise started in January 2020; it takes account of the responses received as well as reflecting the TDB's own researches and experience.

As well as a description of the sanctions available, the Guidance now incorporates revised and updated versions of three documents previously published separately:

- Annex A: Guidance on Fixed Penalties
- Annex B: Publication of Disciplinary and Appeal decisions
- Annex C: Guidance on awarding costs

Comments are invited from interested parties on any aspect of the Guidance. However, the TDB has identified four particular issues for comment and posed specific Consultation questions on them. These are set out below for ease of reference. Any comments may be submitted in writing to

The Taxation Disciplinary Board
PO Box 224, Rushlake Green,
Heathfield, Sussex TN21 1DQ

Or by email to: pdouglas@tax-board.org.uk

It would be helpful if comments could be submitted for receipt by 9 October 2020 so they can be considered at the next TDB Board meeting. However, comments may be submitted at any time as the TDB views its Sanctions Guidance as a living document that will be reviewed at least annually and revised and reissued as appropriate.

The Taxation Disciplinary Board

30 July 2020

Consultation question 1 (page 9)

It has not been the practice of the TDB's Tribunals to set a period which must elapse before the expelled member may reapply for membership as it does not have the specific power to do so under Regulation 20.6(f)(vii). Arguably, the Tribunal can include such a recommendation in its Decision, but the TDB is inclined to propose adding a specific power to the Regulations to allow the Tribunal to do so, so as to put the matter beyond doubt. This would bring the TDB into line with various other regulatory bodies and Tribunals.

The TDB would be interested in views on whether the Tribunal should set such a period before a readmission application can be made when it expels a member; and, if so, whether it should do so as normal practice or only occasionally.

Consultation question 2 (page 9)

There are two main routes under which an expelled member's application for readmission could be considered:

Route 1

Such application initially must be made to the TDB for its confirmation that the period and any other matters laid down in the decision have been complied with; the application may then proceed to the former member's body. The TDB may convene a Disciplinary Tribunal to consider the case.

Route 2

The application is made direct to the member's former body for them to consider. As part of that consideration, the body would refer to the conditions attached to the decision of the TDB's tribunal; the body may contact the TDB for confirmation that those conditions appear to have been satisfied.

The TDB would be interested in views on which route is preferable – in essence, should the TDB's involvement in readmission applications be set or optional?

Consultation question 3 (page 10)

The TDB is considering the place of compensation orders in its range of sanctions. There are two broad issues:

- (1) Should the TDB have power to order compensation at all? Would it be preferable to leave the question of compensation to the courts, given that in some cases the sum available to the TDB Tribunal is likely to be a small fraction of the amount of a complainant's loss?
- (2) If the TDB does retain the power to award compensation, is the £5,000 limit (which has been in place for many years) still appropriate or should it be increased? If an increase is appropriate, to what? (Note that it is not considered that the TDB should have an unlimited power to award compensation.)

Any change under either of these options would require a change to the Taxation Disciplinary Scheme Regulations.

The TDB would be particularly interested in views on the application of compensation orders, which are often considered for findings of Inadequate Professional Service (see page 15 below) and other complaints.

Consultation question 4 (page 26)

The TDB has heard views that maintaining a record on the Board's website indefinitely in cases of expulsion or suspension goes against the principles of the Rehabilitation of Offenders Act. As noted above in Section 2 (page 5), that Act deals with criminal offences rather than civil; also, the taxation profession is exempted from the non-disclosure of spent cautions and convictions. There is also an argument that a potential client of an adviser who has been expelled or suspended in the past has a right to know of that sanction when considering whether to deal with the adviser.

The TDB is inclined to maintain the public record of a member's expulsion indefinitely, even if that member is readmitted. For a suspension, the TDB is inclined to delete the record of a suspension, if the member resume membership, after a period following readmission equivalent to three years or the period of suspension, whichever is longer.

The TDB would welcome views on this area and its guidance.