

# TAXATION DISCIPLINARY BOARD

## GUIDANCE FOR INVESTIGATORY ASSESSORS

### 1. Introduction

1.1 Under the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016 and January 2024) (the “Regulations”), Investigatory Assessors may be appointed to undertake an independent re-examination of a decision taken by either the Reviewer or the Investigation Committee in certain circumstances.

### 2. Role of the Investigatory Assessor

2.1 Investigatory Assessor’s (“Assessor”) are defined in the Regulations as a person from the TDB panel appointed by the TDB Operations Team or an external specialist appointed by the TDB Operations Team to conduct a review of referrals from the Reviewer or appeals from the Investigation Committee.

2.2 An Assessor will either be a legally qualified panel member who has not had any prior involvement with any aspect of the complaint, the complainants, the member, or the subject matter nor eligible to sit on any further Investigation Committee, Interim Orders Panel, Disciplinary Tribunal or Appeals Tribunal set up to hear this complaint **or an** independent external specialist as determined by the TDB Operations Team.

2.3 The function of the Assessor is to review the information and evidence and determine whether the decision reached 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 their experience and judgement to arrive at a reasoned decision.

### 3. Circumstances where an Investigatory Assessor may be appointed

3.1 An Assessor may be appointed to review either, (A) the decision of the Reviewer to reject the complaint or, (B) the decision of the Investigation Committee to take no further action as set out in Regulations 3 and Regulations 6

#### 4. (A) Reviewers decision to reject the complaint

4.1 The initial consideration of every complaint received by the TDB is carried out by the Reviewer

4.2 There are three circumstances in which the Reviewer may reject a complaint without processing it further.

##### 4.2.1 Time limits (Reg 3.4)

4.2.1.1 A complaint that relates to conduct in which the most recent incident occurred or became known to the complainant more than twenty-four months earlier will normally be rejected.

4.2.1.2 The only exceptions are where the Reviewer considers that:

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

#### 4.2.2 Lack of jurisdiction (Reg 3.5)

4.2.2.1 A complaint should be rejected if it falls outside the jurisdiction of the Board. If 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 must reject the complaint.

#### 4.2.3 Minor or vexatious complaints (Reg 3.6)

4.2.3.1 The Reviewer may take no further action if the Reviewer considers that a complaint is vexatious or of such a minor nature that it would not merit any of the sanctions set out in the Indicative Sanctions Guidance. Rejection of a complaint on the grounds that the complaint is of such a minor nature is likely to be unusual, given the wide range of sanctions set out in the Guidance, for example to take no further action, order to rest on file, warning or an apology.

4.2.3.2 A minor 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 consider 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.

4.2.3.3 A vexatious complaint may relate to 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.

## **5 Action to be taken by the Investigatory Assessor**

5.1 Where a complaint is rejected by the Reviewer the complainant will be informed in writing, of the decision and reasons, of the Reviewer and informed of their right to request within 14 days that the decision be reviewed by the Assessor.

5.2 If the complainant makes such a request, the Reviewer will appoint an Assessor to reconsider the decision.

5.3 The Assessor will be provided with all documentation made available to the Reviewer at the time the decision was made..

5.4 The Assessor is not required to consider the views of a participant as defined by Reg 2.1

5.5 The Assessor may in particular circumstances and as a matter of fairness allow the member the opportunity to make representations on the narrow issues which the Assessor needs to decide.

5.6 The Assessor must retake the relevant decision and decide whether to uphold the Reviewers decision and reject the complaint under Reg 3 or whether the complaint should be investigated and referred to the Investigation Committee in accordance with Regulation 3.9..

5.7 The Assessor must give written reasons for the decision and send these to the Reviewer, who will inform the complainant within 28 days of receipt.

5.8 The Assessor's decision is final. There is no right of appeal.

## **6 (B) Investigation Committee decision to take no further action**

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

### 6.2 No case to answer (Reg 5.4(a))

6.2.1 The IC may find that a Prima Facie case has not been made out against the member and rule that the complaint be rejected.

### 6.3 Minor complaint (Reg 5.4(b))

6.3.1 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 consider any previous occasions on which an IC had found a Prima Facie case against that member but had decided to take no further action.

### 6.4 Inadequate evidence (Reg 5.4(c))

6.4.1 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 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.

## **7 Action to be taken by the Investigatory Assessor**

7.1 Where the Investigation Committee decide to take no further action the Member and the Complainant will be informed of the decision and provided with the written reasons of the Committee. The Member and Complainant will also be informed of the Complainants right to request, within 14 days, that the decision be reviewed by the Assessor.

7.2 If the complainant makes such a request, the Reviewer will appoint an Assessor to reconsider the decision.

7.3 The Assessor will be provided with all documentation made available to the Investigation Committee, including the case summary and Committee Bundle together with the Decision of the Committee to take no further action, .

7.4 The Assessor will be required to reach their decision based on those papers alone; there will be no scope for seeking additional information unless the person appealing (whether member or complainant) has submitted additional material to the TDB, that will be available to the Assessor.

7.5 The Assessor must decide whether the decision made by the Investigation Committee was correct or whether the complaint should be referred to a second Investigation Committee.

7.6 The Assessor must give written reasons for the decision and send these to the Reviewer, who will inform the Member and complainant within 28 days of receipt.

7.7 The Assessor's decision is final. There is no right of appeal.

7.8 If the Assessor refers the complaint to a second Investigation Committee, the TDB will appoint its members from those members of the Panel who have had no previous involvement with the complaint. The decision of the second Investigation Committee will be the final stage of the appeal process.

## **8 Applications made out of time**

8.1 Although the time limit in the Reg 3.7 is expressed in mandatory terms the regulations do not prohibit the granting of an extension of time. In respect of time limits relating to the Investigation Committee, Interim Orders Panel, Disciplinary Tribunal and Appeal Tribunal the regulations (Reg 33.1) expressly provide for an extension of time limits in "exceptional circumstances" where it is "just do so" in the view of the decision maker and where doing so would be "reasonable in all the circumstances".

8.2 The Assessor may therefore consider it appropriate to apply the substance of that provision to the decision to extend time if the Assessor is satisfied that the circumstances are exceptional, that it just to extend time, and that it is reasonable to do so.

Taxation Disciplinary Board  
28<sup>th</sup> June 2024