

TAXATION DISCIPLINARY BOARD

GUIDANCE FOR DISCIPLINARY ASSESSORS

Under the Taxation Disciplinary Scheme Regulations 2008 (the “Regulations”), a Disciplinary Assessor will be appointed to consider an appeal against an order made by a Disciplinary Tribunal. The provisions relating to the role of the Disciplinary Assessor (DA) are set out in Regulation 16.

The appeal process

Once a Disciplinary Tribunal has reached its decision, this will usually be announced at the end of the tribunal hearing. Thereafter, the Chairman of the Tribunal is required to record the findings in an order which sets out the facts found by the Tribunal and the reasons for its decisions. The Chairman should complete this order as soon as possible after the Tribunal, and it becomes effective on the date it is served on the defendant.

Both the defendant and the TDB may appeal against a decision reached by a Disciplinary tribunal. There is normally a period of 21 days from the effective date of the order within which they may appeal, although the Chairman of the Tribunal may grant a longer period. The appeal must take the form of a Notice of Appeal addressed to the clerk (ie the Secretary to the Disciplinary Tribunal) and must state the grounds of appeal. Once the clerk receives a Notice of Appeal, he must notify the TDB. The Executive Director of the TDB will then appoint a DA to conduct a review of the grounds of appeal.

Role of the Disciplinary Assessor

Every case in which a Notice of Appeal is received will be examined by a DA. The DA is responsible for considering whether the appeal is frivolous or fails to meet the grounds of appeal.

Regulation 16.3 sets out three grounds on which an appeal may be considered, namely:

- (a) that the procedure followed by the Disciplinary Tribunal which heard the charge did not accord with the Scheme or with the Regulations, and was therefore so unfair to the appellant that the finding cannot be upheld; or
- (b) that the finding and determination of the Disciplinary Tribunal which heard the charge were unreasonable in all the circumstances; or
- (c) that new evidence pertinent to the charge, which could not reasonably have been produced at the time to the Disciplinary Tribunal which heard the charge, has been adduced in the appeal and that evidence would materially have affected the findings of the Disciplinary Tribunal.

These are the only grounds on which an appeal may go forward to the Appeal Tribunal. If one of the grounds is met, the DA must inform the clerk to the Appeal Tribunal (ie the Board’s Executive Director), who will then set in hand the arrangements for an Appeal Tribunal to consider the appeal. If, however, the DA considers that the appeal is vexatious or that none of the three grounds for appeal has been met, he must reject the appeal. In that

case, the Regulation requires the DA to promptly serve written reasons for his decision on the appellant, the complainant, the respondent and the TDB. (It will probably be more convenient for the DA to send the reasons for rejecting the appeal to the TDB's Executive Director to forward to the other named parties.)

Procedures for the Disciplinary Assessor

Assessors will be selected by the TDB's Executive Director on a rotating basis, so that all members of the Disciplinary Panel will have an opportunity to undertake this role. The DA will not have sat on the Disciplinary Tribunal whose order is being appealed, nor will he be eligible to sit on any Appeal Tribunal set up to hear this particular appeal if it is allowed. The DA will be given the order written up by the Chairman of the Disciplinary Tribunal, together with the Notice of Appeal and any other relevant documents supplied by either the defendant or the TDB. The DA will be required to reach his decision on the basis of those papers alone. There will normally be no scope for seeking additional information. But if the person appealing (whether the defendant or the TDB) has submitted additional material to the TDB, that will be available to the Assessor. Although no timescale is set out in the Regulations, the Assessor ought to be able to consider the appeal and produce a written report within two weeks.

The function of the Assessor is to review the information and evidence supplied to him and determine whether the appellant has valid grounds for appeal. There are no defined criteria for reaching that judgement. The Assessor is expected to use his experience and judgement to arrive at a reasoned decision. If he decides to reject the appeal, he will need to be able to explain why the appellant was wrong and has not met any of the grounds of appeal. If he considers that the appeal meets one of those grounds, he should indicate which ground is relevant and why.

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

Taxation Disciplinary Board
October 2008

TAXATION DISCIPLINARY BOARD

REFERRAL TO A DISCIPLINARY 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 defendant.....

Date of Disciplinary Tribunal hearing.....

Order signed by Chairman of Disciplinary Tribunal on.....

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

This form must be returned, together with all the documentation, 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 DISCIPLINARY ASSESSOR

Decision of Assessor

Reasons for decision

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

Continue on additional pages as necessary