

IN THE MATTER OF THE TAXATION DISCIPLINARY BOARD

Reference: TDB/Ref/AML/5

The Taxation Disciplinary Board

-vs-

Andrew Ian Callowhill ATT

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DISCIPLINARY TRIBUNAL HEARING

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Hearing Date

2<sup>nd</sup> November 2016

Location

2 New Square, Lincoln's Inn, London

PERSONS PRESENT

Tribunal

Dr Jonathan Page (Chairman), Marjorie Kostick (Taxation Practitioner) and Penny Griffith (Lay Member).

Representatives

Ben Smiley (Case Presenter for the TDB)

Others present

Nigel Bremner (Clerk to the Tribunal), Alex Colebourne (hearing loggist).

CHARGES

1. The Tribunal convened to consider the following charge that had been brought against Andrew Callowhill:
  - a. Charge 1 (the "Anti-Money Laundering Charge"): Mr Callowhill failed to comply with his anti-money laundering requirements, and thereby breached rr.2.1, 2.11, 7.6.1 and 7.6.2 of the Professional Rules and Practice Guidelines 2011 (the "PRPG").
  - b. Charge 2 (the "Professional Behaviour Charge"): Mr Callowhill failed to comply with or even respond to rules and correspondence from the ATT, the

CIOT and/or the TDB, and thereby breached rr.2.1, 2.6.1, 2.6.2, 2.6.3, 2.8.1 and/or 2.9.2 of the PRPG;

- c. Charge 3 (the "Holding Out Charge"): Mr Callowhill described himself as a member of the CIOT and used its logo and/or badge, despite not being a member of the CIOT, and thereby breached rr.2.1, 3.2.5, 3.3.1, 3.3.2, 3.4.2 and/or 3.4.3 of the PRPG.

2. Mr Callowhill was not present and was not represented.

#### SERVICE

3. The Tribunal first considered whether the case papers had been validly served. The Tribunal noted the requirements of Regulation 14 of The Taxation Disciplinary Scheme Regulations 2014. The Tribunal was satisfied that the documents specified in Regulations 14.1 and 14.2 had been served at least 28 days before the hearing date of the 2<sup>nd</sup> November.
4. The Tribunal was also satisfied that Mr Callowhill had been notified of the date of this hearing (2<sup>nd</sup> November) by 7<sup>th</sup> September. Further, in an e-mail received shortly after 7pm by Mr Callowhill on 1<sup>st</sup> November 2016, he makes it clear that he is aware of the hearing date of 2<sup>nd</sup> November.
5. In the circumstances, the Tribunal was satisfied that service had been validly effected.

#### PROCEEDING IN ABSENCE

6. On 16<sup>th</sup> June at 15:20, Mr Callowhill sent an e-mail to the Clerk to the tribunal stating that he had "just been passed your letter of 9<sup>th</sup> June 2016, and various other documents, by my partner". The letter then sets out various health conditions from which Mr Callowhill alleged he had been suffering. A Disciplinary Tribunal that was convened to hear his case on 17<sup>th</sup> June was adjourned based largely on the contents of the e-mail. On 17 June 2016, the Tribunal decided to adjourn the hearing whilst ordering that:
  - a. Any request for further adjournment should be accompanied by supporting medical evidence; and
  - b. If the Defendant intended to rely on evidence (whether medical or in response to the Charges) he should serve it no later than 5 pm on Monday 8 August 2016.
7. The Clerk to the Tribunal e-mailed Mr Callowhill concerning the proceedings on 17<sup>th</sup> June. By an email dated 29<sup>th</sup> July 2016 Mr Callowhill stated he would be replying further by letter "shortly".
8. The original date for the new hearing was the 11<sup>th</sup> August. For administrative reasons, that date was changed to 2<sup>nd</sup> November. Mr Callowhill was sent an e-mail informing

him of the change on 7<sup>th</sup> September, again on 27<sup>th</sup> September and again on 18<sup>th</sup> October.

9. No further communication was sent from Mr Callowhill throughout August, September and October.
10. On 1<sup>st</sup> November 2016 at 7:09pm, Mr Callowhill sent a long e-mail setting out in clear terms that he did not intend to attend the hearing or to be represented. He wrote the following:

*I regret that I will not be attending the planned Taxation Disciplinary Board hearing scheduled for Wednesday 2 November.*

*There are several reasons for this but principally because I'm not fit enough to travel to London unaccompanied and I'm certainly not fit to attend a hearing on the scale that you clearly have planned. I'm having trouble working at the moment and I'm not about to wreck my health yet again and mess up the last six months hard rest and recuperation.*

11. In his e-mail, Mr Callowhill did not apply for the proceedings to be adjourned.
12. It was plain to the Tribunal that Mr Callowhill was aware of the proceedings. Although he engaged briefly a day before the last hearing and e-mailed stating he would be replying "shortly" after 29<sup>th</sup> July, he did not in fact respond until shortly after 7pm on 1<sup>st</sup> November (the evening before this hearing).
13. In the circumstances, it appears that adjourning the proceedings would serve little purpose. Mr Callowhill did not ask for the proceedings to be adjourned. His e-mail is unsupported by any medical evidence giving a prognosis of when he is likely to recover sufficiently to attend. The Tribunal therefore decided that it would be fair and just to proceed in the absence of the member.

## BACKGROUND

### Charges 1 and 2

14. By virtue of his membership of ATT, Mr Callowhill was required to annually register for the Anti-Money Laundering Scheme (the "Scheme") on 1 June.
15. Mr Callowhill was sent a pre-renewal notice in respect of the Scheme on 29 April 2015. He then appears to have been sent renewal notices by e-mail on 6 May, 22 May, 2 June and 15 June 2015. He was further contacted by email and post on 29 June and 16 July 2015.
16. The final email of 16 July 2015 warned that he would be referred to the TDB if he failed to respond. Further letters (27 September and 26 October 2015) warned Mr Callowhill of his failure to renew his registration for the Scheme and requested his response.

17. On 17<sup>th</sup> January 2016, an Investigation Committee found that there was a prima facie case, that Mr Callowhill had failed to comply with the anti-money laundering requirements, and further, that he had failed to comply with and respond to correspondence from ATT.
18. It is the TDB's case that Mr Callowhill failed to comply with the anti-money laundering requirements as set out in the Professional Rules and Practice Guidelines 2011. Rule 2.11 expressly contains an Obligation to comply with Anti-Money Laundering legislation. The website link sets out the terms by which firms are able to comply with the Anti-Money Laundering Scheme.
19. Rules 7.6.1 and 7.6.2 also provide for a requirement to register, as do the CIOT Scheme Rules, at rule 3.1 and 5.3.
20. In his e-mail dated 1<sup>st</sup> November, Mr Callowhill details a sad history of illness and difficulties he has experienced personally. It is clear from the spirit of his e-mail that he appears to have been too ill to adhere to the strict letter of the rules that were apposite in respect of registration with the Anti-Money Laundering scheme.
21. However, despite the orders that were made on 17<sup>th</sup> June, he did not supply any independent medical evidence in support of his medical condition.
22. It is also clear from his e-mail that he has become disenchanted with membership of the CIOT or ATT. He writes in terms:

*As stated, I wrote to the President querying what purpose my continuing to be a member of The Institute served. As far as I could see at the time – and I haven't seen anything much to change my opinion – that neither the Institute nor the Association does very much to help its members for the fees provided. In particular, I queried how they were trying to help the sole-trader practices and very small partnership practices. I am yet to receive a satisfactory reply to this and it remains my opinion that both the Institute and the Association exist to facilitate the very biggest firms and practices rather than helping the smaller entities who act for the vast majority of taxpayers in the UK.*

23. And later:

*I don't care about the opinions of the professional bodies*

24. And:

*I've been an Association member virtually from its foundation and an Institute member for 25 years. You would think that would mean something. But it doesn't. I've paid a small fortune in subs to both organisations, more recently when I could ill afford to do so. And what have I got to show for them in return – very, very little.*

25. He makes his attitude towards the TDB clear towards the end of his e-mail, in which he states:

*So, the bottom line is, I'm a 51 year old tax adviser who may, or may not, return to his chosen profession. One thing I do know is that I don't need to be a member of a professional body to do what I do for a living.*

### Charge 3

26. Mr Callowhill's CIOT membership was terminated on 1st April 2014 following his failure to pay his subscription. In February 2016 it came to the attention of the TDB that he had continued to publish a website and in which 'Andrew I Callowhill' is described as a 'Chartered Tax Adviser'. There are various sections of the website in which the Logo and Badge of CIOT appear.
27. Professional Rules and Practice Guidelines 2011 rules 2.1, 3.2.5, 3.3.1, 3.3.2, 3.4.2, 3.4.3 prescribe the ways in which and the circumstances in which "Chartered Tax Adviser" may be used.
28. Members' Regulation 44 of The Chartered Institute of Taxation Regulations and the Rules for the Use of the Institute badge expressly set out the pre-conditions for the use of the phrase "Chartered Tax Adviser", the CIOT badge and logo.
29. On 25 February 2016, MW Trade Marks (acting on behalf of the CIOT) wrote to Mr Callowhill, asking him not to use the trademarks and to confirm in writing that he would not use or register the marks in the future. The letter required a response by 18 March 2016.
30. No response was received in respect of this request before his e-mail of 1<sup>st</sup> November 2016. In his e-mail Mr Callowhill stated:

*The last accounts for Callowhill Taxation Services Limited were prepared to 5 April 2010 and the company was dissolved in 2014. The website has now been closed down. It was set up for me by an old friend who I don't see very often which is why it hadn't been taken down earlier. I know virtually nothing about websites and didn't have access to the administration side of it.*

## DECISION AND REASONING

### Charge 1

31. The Tribunal considered the competing cases with care. It is clear that on the face of the documents before it, including the long e-mail sent by Mr Callowhill on 1<sup>st</sup> November 2016, that Mr Callowhill had not complied with the Anti-Money Laundering Scheme requirements or paid his registration fee.
32. It appears that there have been health difficulties and personal difficulties which have been more pressing upon him and has led him to fail to comply with spirit or letter of the regulations that apply in respect of the Anti-Money Laundering requirements.

33. On the basis of the material before the Tribunal, it was entirely satisfied that, as a member of the Association, Mr Callowhill was required to comply with these requirements. The repeated requests for payment would have served to remind him of that requirement. The Tribunal found that Mr Callowhill had failed to comply with those requirements and as such found this charge proved.

#### Charge 2

34. The Tribunal considered the repeated requests from CIOT, ATT and the TDB for a response from Mr Callowhill before and during the disciplinary proceedings. It was clear to the Tribunal from his e-mails dated 16<sup>th</sup> June and 2<sup>nd</sup> November 2016, that he was able to respond to correspondence.

35. Even allowing for illness and personal difficulties, the Tribunal did not think that this justified Mr Callowhill's almost total failure to respond to correspondence until 16<sup>th</sup> June 2016. Even then, he promised a response shortly after 29<sup>th</sup> July, but failed to address the charges until 1<sup>st</sup> November.

36. In light of Mr Callowhill's failure to respond within a reasonable time to repeated requests, the Tribunal found this charge proved.

#### Charge 3

37. Mr Callowhill expressly accepts that the website remained on-line because he had not commissioned its removal. The website plainly infringed the rules that govern the use of the phrase "Chartered Tax Adviser", as well as the use of the CIOT badge and logo. In the circumstances, the Tribunal found this charge proved.

#### SANCTION

38. The Tribunal reminded itself that it was not there to punish. The Tribunal was concerned with imposing a sanction which struck a fair and proportionate balance between the public interest on the one hand and Mr Callowhill's interests on the other. The public interest includes the protection of members of the public, maintaining public confidence in the profession and upholding proper standards of conduct.

39. The Tribunal concluded that Mr Callowhill had failed to protect the public by failing to comply with the Anti-Money Laundering scheme. As a member of the association he was duty-bound to comply with a scheme that was designed to prevent the use and dissipation of criminal funds. A failure to register led to a risk that he would fail to comply with the rules of the Anti-Money Laundering scheme. He had failed to protect the public and continues to fail to protect the public whilst he remains unregistered and also a member. The Tribunal also found that he failed to uphold proper standards of conduct by failing to register with the scheme. By joining a professional association or institute, members are required to comply with the rules of the organisation concerned. The public would expect nothing less.

40. His failure to co-operate with or respond to CIOT, ATT and the TDB represented a failure to uphold proper standards expected from a professional such as Mr Callowhill. Irrespective of any medical or personal difficulties, the Tribunal was of the view that a professional such as Mr Callowhill should have had in place a system whereby the various bodies who were continually trying to elicit a response from him were given the basic courtesy of a reply within a reasonable time.
41. Finally, the use of a website to advertise his services as a “Chartered Tax Adviser” and the use of the CIOT logo and badge represented a further failure to uphold the standards expected of him. He ceased to be a member of CIOT on 1<sup>st</sup> April 2014, and yet this website remained on public view up until at least 15<sup>th</sup> February 2016. This was an unacceptably long period, notwithstanding any medical and personal difficulties.
42. The Tribunal also noted the general antipathy and disregard he harboured towards the TDB, CIOT and the ATT in his e-mail of 1<sup>st</sup> November 2016.
43. This Tribunal was concerned with the appropriate and proportionate sanction in all of the circumstances of this case. The Tribunal considered, in ascending order, which sanction was the minimum necessary in order to protect the public, maintain public confidence in the profession and uphold proper standards of conduct.
44. Having heard evidence and having read the documents contained in the bundle, the Tribunal was satisfied that taking no further action, ordering the matter to lie on file, a warning or a censure were not appropriate sanctions given the gravity of the charges found proved. Similarly, an apology or a fine would not be appropriate in the circumstances.
45. The Tribunal considered whether a suspension with conditions may be appropriate. However, given Mr Callowhill’s attitude towards the bodies concerned and his past reluctance to engage or ameliorate, the Tribunal was of the view that this sanction would serve no purpose. In any event, the Tribunal was of the view that this sanction was insufficient to mark the serious failures that had occurred in this case.
46. In all of the circumstances, the Tribunal was of the view that expulsion was the only sanction that was proportionate and appropriate. The Tribunal so ordered.

#### COSTS

47. The Tribunal considered an application by the TBD for costs in the sum of £5,410.13. This included the costs of the adjourned hearing on 17<sup>th</sup> June as well as the hearing on 2<sup>nd</sup> November. The Tribunal had the benefit of a breakdown of those costs, which appeared on the face of the breakdown to be reasonable.
48. The Tribunal ordered that these costs are to be paid by Mr Callowhill.

#### PUBLICITY

49. Mr Callowhill had raised nothing in respect of publicity and so the Tribunal ordered that that publicity should follow this hearing in the normal way.

Dr Jonathan Page  
8<sup>th</sup> November 2016