

IN THE MATTER OF THE TAXATION DISCIPLINARY BOARD

Reference: TDB/Ref/2016/07

THE TAXATION DISCIPLINARY BOARD

Presenter

and

STEPHEN COLECLOUGH CTA, ATT

Defendant

DISCIPLINARY TRIBUNAL HEARING

Hearing Date

2nd 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), Robert Foreman (Representing Stephen Coleclough), Stephen Coleclough CTA, ATT

Others present

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

CHARGE

1. The Tribunal convened to consider the following charge that had been brought against Stephen Coleclough:

Charge 1: on 25th February 2016, the defendant was, upon his own confessions, convicted on indictment of

- i. One count: possession of extreme pornographic images – acts of intercourse/oral sex with a dead/alive animal
- ii. Six counts: making indecent photographs or pseudo-photographs of a child; and
- iii. One count: distributing indecent photographs of pseudo-photographs of a child

In the premises, the defendant has conducted himself in a manner which tends to bring discredit upon himself and/or tends to harm the standing of the profession and/or the ATT and/or the CIOT, and so is guilty of Conduct Unbefitting pursuant to r.2.1(j) of the TDSR and so is guilty of the misconduct so defined.

2. Mr Coleclough admitted the charge that was before the Tribunal.

BACKGROUND

3. Mr Coleclough is a Fellow of the Chartered Institute of Taxation and a member of the Association of Tax Technicians. He was president of the Institute between 16th May 2013 and 15th May 2014.
4. On 26th March 2015 Mr Coleclough was arrested by Northamptonshire Police's Paedophile On Line Investigation Team following information that was provided to them by Police Officers based in New Zealand. When his computers were forensically examined, a large number of pornographic images of children and extreme pornography was found to have been saved to the hard drive. In total there were 138 images in category A (the most serious category), 93 images in category B and 149 images in category C. He was also in possession of 29 extreme pornographic images depicting offensive sexual acts between persons and animals. Further investigation of the hard drives revealed that he had also distributed 106 pornographic images of children.
5. The offences took place between 1st January 2014 and 26th March 2015 (a period of about 15 months).
6. On 26th November 2015 he appeared before Northampton Magistrates' Court where he indicated guilty pleas to the following 8 charges:
 - a. Possessing extreme pornographic images
 - b. Making indecent photographs of a child x 6
 - c. Distributing indecent images of a child
7. His case was committed for sentence to Northampton Crown Court, where on 25th February 2016 he entered guilty pleas to counts mirroring the charges outlined above. His case was adjourned for a Pre-Sentence Report to be prepared.

8. On 27th April he was sentenced by His Honour Judge Mayo to 14 months' imprisonment, suspended for 2 years with a requirement that he completes the Thames Valley Sex Offender's Programme. He was ordered pay costs. He will remain on the Sex Offenders' Register for 10 years. He was also made subject to a sexual harm prevention order.
9. As a result of his conviction, a complaint was made by the Chartered Institute of Taxation on March 2016. That complainant resulted in the allegations that are now before this Tribunal.
10. Mr Coleclough is currently 54. He has expressed remorse for his actions since his arrest and accepts that his behaviour was wrong on every level. The Committee has read the material advanced on his behalf which details the stress under which he found himself during the period of offending.
11. The Tribunal read and noted the 3 positive references that were provided on his behalf. It appears that Mr Coleclough had been at the forefront of the profession and had been highly regarded. He had been a senior taxation partner at a very large and prestigious accountancy firm and was employed at the time of his arrest as a consultant with a leading firm of solicitors.
12. The Tribunal were particularly mindful of the powerful letter that was written by Mrs Coleclough and noted the continuing effect that his offending has had on his family.
13. A psychiatric report written by Dr Andrew Iles has provided the Tribunal a detailed assessment of Mr Coleclough from a psychiatric perspective and includes considerable detail about Mr Coleclough's background.
14. The Tribunal read with care the steps that Mr Coleclough has undertaken in order to prevent re-offending. This has included a 10-session education course with the Lucy Faithful Foundation, as well as Cognitive Behavioural Therapy (CBT). He has installed computer software which will automatically alert the authorities if he seeks out illegal pornographic images using his computer.
15. He has virtually completed the Sex Offenders' Treatment Programme imposed by the Crown Court and will be subject to a suspended prison sentence until 26th April 2018. He will remain subject to a Sexual Harm Prevention Order, and will remain on the Sex Offenders' Register for 10 years.
16. The Tribunal heard submissions from Mr Foreman about the efforts that Mr Coleclough had made to rehabilitate himself, the effect upon him personally and professionally and the steps that he will continue to take in order to return to full health. The Tribunal heard evidence from Mr Coleclough himself. He apologised for his offending and appeared remorseful. He admitted that at the time of his offending he knew that his behaviour was 'not normal'. He now recognised that images of child pornography were in fact images of child abuse.

PUBLIC HEARING

17. At the start of the hearing, Mr Foreman applied for the hearing itself to be heard in private. He accepted immediately that the proceedings would normally be heard in public and referred to Regulation 24.1 of The Taxation Disciplinary Scheme Regulations 2014. This Regulation states:

All hearings by a Tribunal shall be held in public, but the Chairman of a Tribunal may exclude the press and public ... from all or any of part of the proceedings if it appears to him desirable to do so in the interests of justice or for any other reason.

18. Mr Foreman and Mr Smiley agreed with the suggestion that it would be appropriate for the 3 members of this panel to make a collective decision. Mr Foreman suggested that the test that the Tribunal should apply was: whether there were sufficient factors to weight against the default position [that proceedings should be held in public].
19. Mr Foreman relied upon 2 grounds. The first ground was the effect of these proceedings on third parties, that is Mr Coleclough's family members. His family had suffered embarrassment and distress as a result of the publicity in local newspapers following his Court appearances. Beyond that embarrassment and distress, other factors detailed in Mrs Coleclough's letter were also brought to the Tribunal's attention which concerned the possible health impact on family members.
20. The second ground was the effect of further publicity on the health of Mr Coleclough. There was considerable detail given in the report of Dr Iles about the effect of the initial arrest, subsequent charge and on-going proceedings upon Mr Coleclough's mental health. Dr Iles diagnosed adjustment disorder and (probably) a disorder of sexual preference. Dr Iles reports in respect of the Adjustment Disorder that

As is often the case with adjustment disorder, the symptoms will be maintained until the stressor has been excluded. Although the initial arrest has now long since passed, the ongoing criminal proceedings will have of course acted as a maintaining factor in his mental disorder. He will undoubtedly continue to experience symptoms of depression and anxiety until at least the sentencing hearing.....He is fearful of going to prison both because of his own fears of incarceration but also following the session at the Lucy Faithful Foundation when and his peers heard from an ex-prisoner.

In terms of his adjustment disorder, even if he is not sent to prison and his sentence suspended, he will likely require ongoing psychological support in order to help him adjust to his new life.

21. That report was dated 18th March 2016. Sentencing took place on 27th April and Mr Coleclough was not given an immediate custodial sentence. Further, he has continued to receive CBT. There was no update on his mental health although it was plain to the

Tribunal that he was beginning to put much of his life back together. For example, he was now working as a freelance consultant.

22. The starting point is that these Tribunal proceedings are to be held in public. It is important that public confidence and trust in the regulator is maintained.
23. Although the Tribunal had sympathy for those innocent parties who were unwittingly caught up in Mr Coleclough's criminal behaviour, the effect and future risk to them engendered by further publicity did not justify a departure from hearing this case in public.
24. Similarly, the Tribunal did not feel that the risk to Mr Coleclough's health justified any derogation from the starting point, that these proceedings ought to be heard in public. Accordingly this application was refused.

DECISION AND REASONING ON THE CHARGES

25. Mr Coleclough has admitted "Conduct Unbefitting", which is defined as 'conduct on the part of a member, including in a personal capacity, which tends to bring discredit upon the member and/or tends to harm the standing of the profession and/or the Association of Institute', at Regulation 2.1 (j) of the Taxation Disciplinary Scheme Regulations 2014. Accordingly, the Tribunal found the charge proved.
26. The Tribunal reminded itself that it was not its intention to punish; Mr Coleclough has been sentenced and therefore punished by the criminal Courts. 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 Coleclough'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.
27. It appears from the efforts that Mr Coleclough has made, and as a result of the Court orders imposed upon him that his risk of re-offending in a similar way has reduced.
28. This Tribunal is fundamentally concerned with maintaining the reputation of the CIOT and ATT. As was set out by Lord Bingham (M.R.) in Bolton vs The Law Society [1994] 1 W.L.R 512:

A profession's most valuable asset is its collective reputation and the confidence which that inspires". The Judgment continues: "[The essential issue] is the need to maintain among members of the public a well-founded confidence that any solicitor [in this case tax adviser] whom they instruct will be a person of unquestionable integrity, probity and trustworthiness." And later, "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

29. The Tribunal read section 4 of the 'Indicative Sanction Guidance' (dated April 2016). The Sanction Guidance for a criminal conviction where the offence was not committed in a

professional capacity and did not result in a prison sentence is a “reprimand”. However, this is guidance only and is not intended to be treated as a tariff.

30. The Tribunal noted that some of Mr Coleclough’s offending occurred while he was the President of CIOT. The reputation of the profession will undoubtedly have been affected as a result. Although it cannot be said that his offending had any impact on his professional abilities as a tax adviser, the Tribunal were of the view that the public would and should expect the President of a professional Regulatory body to behave with the utmost probity and integrity in both his professional and personal lives.
31. This Tribunal is concerned with the appropriate and proportionate sanction in all of the circumstances of this case. The Committee 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.
32. Having heard evidence and having read the documents contained in the bundle, the Tribunal was satisfied that Mr Coleclough had recognised the risks of re-offending and had put in place measures to manage those risks. He had completed an education course, was receiving treatment from a clinical psychologist and had all but completed the Sexual Offences Treatment Programme. In addition, he had installed software on his computer.
33. In this case the Tribunal were principally concerned with protecting the public interest and specifically maintaining public confidence in the profession. Mr Coleclough had failed to maintain public confidence in the profession and uphold standards of conduct at a time when the public were entitled to expect very high standards from no less than the President of the Institute. Mr Coleclough’s departure from those very high standards was considerable and occurred over many months.
34. Taking no further action, ordering the matter to lie on file, a warning or a censure were plainly not appropriate given the gravity of the unbecoming conduct. Similarly, an apology or a fine would not be appropriate or sufficient in the circumstances. Suspension, also, did not adequately reflect the serious nature of his transgression from the standards that Mr Coleclough should have maintained.
35. Maintenance of the public’s confidence in the profession demanded that the only sanction that was appropriate and proportionate was exclusion. The Tribunal so ordered.

COSTS

36. The TDB made an application for costs in the sum of £4,304.33. The application was unopposed. The Tribunal reviewed the breakdown and considered that the costs had been reasonably incurred and so ordered costs in that sum.

PUBLICITY

37. The Tribunal heard submissions from Mr Foreman that there should no publicity of this decision. Mr Foreman referred the Tribunal to the arguments that he had advanced earlier (as outlined in paragraphs 19 and 20 above).

38. The Tribunal were not satisfied that the grounds advanced justified withholding publication. Again, it was in the public interest for decisions to be published, and so publicity in the usual way was ordered.

39. The parties then invited the Tribunal to make the following agreed order:

To the extent permitted by law and the TDSRs the Tribunal directs that pages 37 to 47 and pages 52 to 86 of the hearing bundle should not be disclosed save in relation to disciplinary or other proceedings.

40. The reason for this proposal was to prevent disclosure of certain highly personal information that had no direct bearing on the decision-making itself. In light of the agreement of the parties and the nature of the very private information contained within the pages identified, the Tribunal made an order in the terms set out above.

Dr Jonathan Page
Chairman
8th November 2016