

**IN THE MATTER OF THE TAXATION
DISCIPLINARY BOARD**

Reference: TDB/2015/06

BETWEEN:-

THE CHARTERED INSTITUTE OF TAXATION

-v-

SUSAN HELEN JELKS CTA

DECISION

Introduction

1. The disciplinary tribunal sat on the 16 December 2015 at Artillery House, 11-19 Artillery Row, London SW1 to hear one charge brought against Ms Jelks.
2. The tribunal was chaired by Ms Valerie Charbit, sitting with Ms Penny Griffith (lay member) and Ms Marjorie Kostick (the taxation and accountant member).
3. The Chartered Institute of Taxation was represented by counsel, Mr Ben Smiley. Ms Jelks did not attend the hearing, she was legally represented by Mr Paul Bennett. The clerk to the tribunal was Mr Nigel Bremner.

Proceeding in Absence

4. Mr Bennett, told the Committee that Ms Jelks had voluntarily absented herself from the hearing by electing not to attend. He invited the tribunal to proceed in the absence of Ms Jelks.
5. The tribunal was satisfied that Ms Jelks was properly represented and had given full instructions to Mr Bennett. It therefore decided that it was in the public interest and the interests of both parties that the case proceed and that Ms Jelks would not attend if the case was adjourned.

Papers

6. The tribunal had before it a skeleton argument of the presenter, the skeleton argument on behalf of Ms Jelks, Macleod v The Royal College of Veterinary Surgeons [2006]UKPC

39, Bolton v The Law Society [1993] EWCA Civ 32, a response form from Ms Jelks to the charge, a witness statement of Ms Jelks, a medical certificate relating to Mr Ronald Jelks, a Taxation Disciplinary Board Investigating Committee report, selected emails as agreed disclosure documents, confirmation of anti-money laundering registration and other correspondence between the parties.

7. Ms Jelks was charged with:

Charge 1 – (the “Anti Money Laundering Charge”)

In breach of Rules 2.1, 2.11, 7.6.1 and/or 7.6.2 of the PRPG 2011, the Defendant failed (a) to comply with the relevant money laundering legislation, regulations and guidance and/or (b) failed to advise the CIOT of her Supervisory Authority under the Money Laundering Regulations 2007.

In particular, the Defendant failed to be registered on the CIOT’s Money Laundering Regulations 2007 Registration, Monitoring and Compliance Scheme (the “Scheme”) and/or breached the rules of that Scheme:

- Rule 3.1: the requirement to apply for registration under the Scheme, using the form issued by CIOT for that purpose;
- Rules 5.3(a) and (b): the requirement to complete and submit an annual return for the years 2011 to date and pay the registration and annual retention fee;
- Alternatively, Rule 5.3(d): the requirement to inform the COIT if she (i) wished to withdraw from the register, or (ii) proposed to wind up or was the subject of insolvency proceedings, or (iii) otherwise ceased to be liable to be registered.

Background

8. The facts were set out in the skeleton argument of Mr Smiley.
9. Pursuant to rr.2.11 and 7.6 of the Professional Rules and Practice Guidelines 2011 (the “PRPG”) it is necessary for members of the CIOT to comply with the relevant anti money laundering legislation.
10. The Scheme sets out requirements which CIOT members must meet in order to comply with that legislation. Those include:
 - i. Rule 3.1: the requirement to apply for registration under the Scheme, using the form issued by the CIOT for that purpose;

- ii. Rules 5.3 (a) and (b): the requirement to complete and submit an annual return for the years 2011 to date and pay the registration and annual retention fee;
 - iii. Rule 5.3(d): the requirement to inform the CIOT if she (i) wished to withdraw from the register, or (ii) proposed to wind up or was the subject of insolvency proceedings, or (iii) otherwise ceased to be liable to be registered.
11. On 22 September 2014, Ms Lisa Malone of the CIOT emailed Ms Jelks informing her that she was not on the CIOT's list of registered firms or members for the Scheme. Details of the requirements of the Scheme, how it differed from the register of the CIOT, and how to register were also provided.
 12. There followed a course of correspondence between Ms Jelks and Ms Malone from September 2014 to February 2015, in which: (i) Ms Jelks refused to accept that she required to register for the Scheme, and referred to a previous conversation with a CIOT officer to support this; and (ii) Ms Malone reiterated the requirements of the Scheme and that Ms Jelks was not registered.
 13. The records of the conversation on which Ms Jelks appears to rely demonstrate that in fact on 5 July 2011 Ms Jelks had been informed that she was not registered for the Scheme and in response she had been "very unpleasant" and denied that she was required to register.
 14. As a result of Ms Jelks' failure to register for the Scheme and/or reply promptly or at all to the CIOT's emails, the matter was referred to the Taxation Disciplinary Board (TDB).
 15. There then followed numerous emails, beginning on 11 March 2015, in which the TDB reiterated the position that had already been explained by Ms Malone, namely that Ms Jelks was required to be registered for the Scheme and was not.
 16. Ms Jelks responded to these email by lengthy emails and telephone messages left with the TDB outside of normal working hours, in which she maintained that she had already complied with whatever was necessary due to a bank standing order or direct debit (see e.g. the emails of 12, 19 and 23 March 2015).
 17. Further email exchanges took place, in which the TDB reiterated the position that had been previously stated, and Ms Jelks stated that she did not know what she was required to do, relying on difficulties with technology.

18. In order to ensure that Ms Jelks had received all relevant correspondence, by letter of 13 April 2015, the TDB enclosed all the emails that had previously been sent, and reiterated that Ms Jelks was not registered for the Scheme and so was in breach of the relevant legislation and the PRPG.
19. Ms Jelks continued to claim that she had not received relevant post or emails, and so the TDB continued to re-send the previous correspondence that had been sent, reiterating that she remained unregistered for the Scheme. Notwithstanding the numerous emails clearly setting out the position, Ms Jelks had still not registered for the Scheme by June 2015.
20. Accordingly, on 11 June 2015, the Investigation Committee of the CIOT met and determined that there was *prima facie* evidence to support the allegation of breach of the PRPG in respect of anti money laundering rules. Ms Jelks was informed of the same by letter of 29 June 2015.
21. Following service of the Schedule of Charges on 14 September 2015, Ms Jelks finally registered for the Scheme on 8 October 2015.
22. Mr Smiley highlighted that the failure to register meant that Ms Jelks was not supervised by any authority and he submitted that her failure to register meant that there were repercussions beyond the administration of the scheme.
23. The Tribunal was referred to the Indicative Sanctions Guidance under the heading “*Other liabilities and breaches of bye-laws or regulations*” which states that in respect of breach of AML regulations (not involving criminal activity or dishonesty) the guideline is censure.
24. The listed aggravating factors are (i) the period of time involved and (ii) deliberate or reckless disregard of order or regulations. The listed mitigating factor is “*steps swiftly taken to rectify breach*”, though it is also stated that any “*personal mitigation will be taken into account*”.
25. Applying those principles to the facts of the case, Mr Smiley asked the Tribunal to note the following:
 - i) It would appear from the correspondence that Ms Jelks was never registered for the Scheme until October 2015, despite the fact that she had very clearly been informed on numerous occasions as to the requirement to do so and the manner in which it could be done.
 - ii) It cannot be said that Ms Jelks acted swiftly to rectify her breach. The first evidence of her being informed of this breach is from 2011, and the more recent run of regular correspondence from the CIOT began in September

2014, yet she only registered for the Scheme more than a year later, in October 2015.

- iii) Although Ms Jelks claims that her failure to comply with the regulations was due to miscommunication or misunderstanding, that explanation is simply not credible given the wealth and clarity of the correspondence sent to her.
- iv) Instead, it is submitted that the only plausible explanation for Ms Jelks' conduct is that she deliberately or recklessly ignored the relevant rules and the explanations given by both the CIOT and the TDB.
- v) Ms Jelks refers to the unfortunate situation regarding her father's health. However, it is difficult to see how this could be taken to either explain or excuse Ms Jelks' refusal to comply with the relevant rules, which are a statutory requirement.
- vi) Ms Jelks compounded her consistent breach of the rules (and legislation) by corresponding with both the CIOT and the TDB in a manner which was discourteous and unprofessional. In particular:
 - the record of her call on 5 July 2011 describes her as becoming *"very unpleasant"* to the relevant staff member of the CIOT
 - In an email to Mr Douglas of the TDB on 12 March 2015 she stated *"I suspect you wish me dead... You seem to want to put the final nail in my coffin."*
 - In another email to Mr Douglas on 17 April 2015 she stated similarly *"I can only conclude you wish me dead and you are looking forward to "put the final nail in my coffin"."*
 - In a further email to Mr Douglas she stated *"...I can only assume you wish me to "end my life"."*
 - She refused to accept contact by post, claimed to be unable to manage the technology of contact by email, and gave wholly unrealistic contact times by telephone of e.g.:4am or after 10pm at night in the email of 12 March 2015; between 4am and 6am or after 8.30pm in her email of 23 March 2015; between 10pm and 4am or 6am in her email of 17 April 2015.

Ms Jelks's case

- 26. Ms Jelks admitted the allegation in a skeleton argument on behalf of Ms Jelks dated 7 December 2015.
- 27. The skeleton argument detailed that there were circumstances leading up to misunderstandings and misinterpretations that had caused Ms Jelks to have breached the

regulations and to have failed to comply with the Anti-Money Laundering scheme. The circumstances detailed were:

- i) that Ms Jelks did not understand the twin pronged registration requirements
- ii) that she had practised on her own since 2006 when her father, now 94 years of age had had an accident and she had thus become his sole carer
- iii) she had to care for her father 23-7 until 2012 when she was able to secure some respite care
- iv) Ms Jelks misunderstood matters and believed that COIT were being deliberately difficult in trying to secure more money from her
- v) Ms Jelks misunderstood the confusing email correspondence because of limited IT skills and she lost correspondence prior to reading it and failed to understand the correspondence she did read (and reply to)
- vi) the respondent was not able to accept any correspondence to her postal address as post often went astray to this complicated matters
- vii) she believed her direct debit to the COIT included a fee for Anti-Money Laundering

28. Ms Jelks submitted that as soon as she understood matters she rectified them.

29. The witness statement of Ms Jelks apologised to the COIT and the TDB. She stated at no point did she intend to be rude or discourteous towards the COIT. She further stated that her actions were in no way deliberate or intended to be obtuse or difficult.

30. Ms Jelks explained in her witness statement matters of personal mitigation which related to the difficulties she experienced living in an isolated small holding with multiple livestock to tend, her responsibilities and her role as a carer to her father who has been unwell for sometime.

The Hearing

31. Mr Bennett on behalf of Ms Jelks admitted the charges.

32. Mr Bennett submitted that Ms Jelks was vulnerable and that there was no public interest in censuring Ms Jelks after she had registered with the scheme when she had not previously registered due to a misunderstanding and misinterpretation.

33. Mr Bennett accepted that Ms Jelks had failed to register when she should have done but he submitted that it was not a proportionate sanction to censure her. He submitted that since her failure to register came about due to confusion and misunderstanding it would be disproportionate to sanction her with anything beyond a warning.

34. Mr Bennett submitted that Ms Jelks had made an honest mistake and that her personal circumstances and eccentric way of working meant that she had honestly misunderstood what was required of her and that her belief that she had been complying was a genuine.
35. He further submitted that the COIT failed to take account of what were obvious flags of vulnerability and that Ms Jelks could have been dealt with more sensitively.
36. In answer to a question asked by the tribunal about whether Ms Jelks had any medical problems, Mr Bennett informed the Committee that Ms Jelks had not seen a doctor in over fifty years. He confirmed that she does not consider herself to be disabled nor is she.
37. Mr Bennett highlighted that some of the delay was in part due to the COIT. He also stated that the tribunal should take into account that there was no evidence of any damage to the public.
38. The tribunal was informed that Ms Jelks had no previous disciplinary findings against her.

Tribunal's findings and reasons

39. The Tribunal found the charge proved on the basis of the correspondence within the bundle and having taken into account Ms Jelks' admissions.
40. The Tribunal considered it important to further determine whether Ms Jelks had been deliberately obstructive or whether she had been simply vulnerable at the relevant time. It had considerable correspondence disclosed within its bundle. The tribunal was satisfied that the correspondence made clear in polite and simple terms what was required of Ms Jelks. It found that her reaction to that correspondence was deliberately obtuse because for example she suggested that any telephone correspondence with her should take place between the hours of 10pm and 4am. The tribunal also noted that her correspondence with the COIT was at times rude and it found on a reading of the correspondence that she had either deliberately not followed clear instructions or she had chosen not to do so.
41. The tribunal noted that Ms Jelks only took action to register after charges were brought against her. It further noted that the public were not protected when Ms Jelks had failed to register with a scheme because her anti-money laundering obligations, including the requirement to be open to any regulatory checks, had not been met. The Tribunal concluded that her breach of the regulations amounted to a failure to comply with the proper regulation of professionals.

42. The tribunal further concluded that there was no evidence that Ms Jelks was particularly vulnerable. Her written correspondence suggesting for example to the clerk of the TDB “*I suspect you wish me dead*” and as set out at paragraph 25(vi) above was not the way the public would expect a professional to correspond and aggravated her position.

Sanction

43. The tribunal considered the Indicative Sanctions Guidance (May 2012) and noted that the guideline sanction for a breach of Anti-Money Laundering regulations was a censure. It also referred to the principles set out in the cases of Macleod v The Royal College of Veterinary Surgeons [2006]UKPC 39, Bolton v The Law Society [1993] EWCA Civ 32.

44. The Tribunal having concluded that the breach of the regulations was deliberate also considered the breach to be serious because Ms Jelks had for a significant period of time failed to comply with the Anti-Money Laundering scheme and had not taken steps to swiftly rectify the breach when it was brought to her attention.

45. The Tribunal determined that the conduct was also serious because it meant that for a significant period of time Ms Jelks was not subject to any checks to ensure she was compliant with Anti-Money Laundering Regulations. There was no evidence at all about her compliance during that period and the Tribunal noted that the purpose of the regulations was to ensure that the public could be protected by those who were registered being subject to appropriate scrutiny.

46. The Tribunal noted that Ms Jelks had found herself in difficult personal circumstances but that since her father had been in a care home for the last two years it concluded that she should have been able to understand the relevant correspondence.

47. The Tribunal therefore decided that a sanction of ‘no further action’ or an ‘order to rest on file’ was inappropriate where the conduct was described as serious.

48. The Tribunal decided that a ‘warning’ was not appropriate in the circumstances of this case where the tribunal had found the conduct to be deliberate and where the correspondence suggested that Ms Jelks appeared to have limited insight into the significance of her failure to comply with the Anti-Money Laundering scheme regulations. Further it was not persuaded that her conduct was at the lower end of the spectrum because the breach of the regulations by her had continued from September 2014 to October 2015.

49. The Indicative Sanctions Guidance referred to a censure “*where the conduct was of a serious nature but there were particular circumstances of the case or mitigation which*

satisfy the Tribunal that there is no continuing risk to the public, and there is evidence of the member's understanding and appreciation of the conduct which has been found proved. A censure will be appropriate where a Tribunal considers that the misconduct is unlikely to be repeated in the future”.

50. The Tribunal decided that a censure was the proportionate sanction having taken into account the personal mitigation. Since Ms Jelks was now registered there was no continuing risk to the public.

Costs

51. Mr Smiley applied for costs in the sum of £2,272.25 to be paid by Ms Jelks.

52. Mr Bennett submitted incomplete information regarding Ms Jelks' financial position. He did not submit a full statement of means on behalf of Ms Jelks but he asked the Committee to take account of paperwork showing that she had insufficient income to meet her current outgoings.

53. The Tribunal noted that paragraph 5.6 of the TDB's Guidance on Awarding Costs, states that *“where a member challenges a costs order on the grounds that he lacks the means to pay the sums required the Tribunal must require evidence. For this reason, if he is likely to seek to challenge a costs order, a member will be advised to come to a hearing with some documentary proof of his or her financial circumstances. If a member does not provide proof of financial means, a Tribunal is entitled to assume that he is able to meet any financial penalty and/or costs that it orders”.*

54. The Tribunal decided that since Ms Jelks had failed to provide full disclosure of her means it was not persuaded that she did not have the means to pay the costs. It therefore ordered that she pay the costs of £2,272.25.

Publicity

55. The tribunal ordered that in accordance with Regulation 28, a record of the decision and findings of the tribunal, naming Ms Jelks, would be publicised as soon as practicable.

Valerie Charbit
Chairman

8 January 2015