

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

**Reference: TDB/Ref/2016/04**

**THE CHARTERED INSTITUTE OF TAXATION**

**Presenter**

**- and -**

**TERENCE SEFTON POTTER CTA**

**Defendant**

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**DECISION AND REASONS**

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**Introduction**

1. The Disciplinary Tribunal sat on Friday 17 June 2016 at Artillery House, 11-19 Artillery Row, London SW1 to hear charges brought against Terence Sefton Potter (the Defendant).
2. The Tribunal was chaired by Linda Lee sitting with Mrs Marjorie Kostick and Penny Griffith. The Presenter was Ben Smiley of Counsel. The Clerk to the Tribunal was Nigel Bremner. The Defendant was not present and was not represented.

**The Charges**

3. The charges set out below make reference to the following rules of the Professional Rules and Practice Guidelines 2011 of the Chartered Institute of Taxation (the "CIOT") (the "PRPG"):
  - i. Rule 2.2.2 (Integrity);
  - ii. Rule 2.10.1 (Obligation to notify the CIOT and the ATT).

#### Charge 1 (The “Integrity Charge”)

4. In breach of Rule 2.2.2 of the PRPG, the Defendant engaged in and/or was party to illegal activity.
5. In particular:
  - i. On 17 September 2015, the Defendant was, upon his own confession, convicted on indictment of four counts of conspiracy to cheat the public revenue (the “Conviction”);
  - ii. On 18 December 2015 he was sentenced to imprisonment for 8 years, (in respect of which 66 days spent on electronically monitored curfew was to count towards that sentence) (the “Sentencing”).

#### Charge 2 (the “Failure to Notify Charge”)

6. In breach of Rule 2.10.1 of the PRPG, the Defendant failed to inform the CIOT promptly or at all that he had been convicted of a criminal offence and/or that he had been charged with a financial crime.
7. In particular, following (a) the Conviction on 17 September 2015 or (b) the Sentencing on 18 December 2015 or (c) the charges which must have preceded the Conviction, the Defendant failed to inform the CIOT of the same, whether promptly or at all.
8. Instead, the CIOT discovered and/or was informed about the Conviction and the charges which must have preceded it from reports of the Defendant’s Conviction and its underlying factual basis in the following:
  - i. *Economia*, dated 11 December 2015;
  - ii. *The Times*, dated 11 December 2015;
  - iii. *WalesOnline*, dated 14 December 2015.

#### **Absence of the Defendant**

9. The Tribunal was shown that notice of these proceedings had been served on the Defendant at the registered address held by CIOT by registered air mail delivery posted 4 April 2016 and by international tracked letter posted 25 April 2016.

10. The Tribunal was shown the copy letters and returned envelopes for both postings marked as 'addressee unknown at marked address'
  
11. The Tribunal was also shown correspondence with the Prisoner Location Service by e mail. By email of 25 January 2016 at 15:42 Mr Peter Douglas, Executive Director of the Taxation Disciplinary Board requested that the Prisoner Location Service provide the location of the Defendant. In that e mail he provided his contact details and indicated that he wished to contact the Defendant stating that, '*..following his conviction and then his sentence on 18 December 2015 at Southwark County Court, this Board is required to open disciplinary proceedings against Mr Potter. He is entitled to provide such explanation of the circumstances of his offence as he wishes, and we wish to let him know of our procedures, and of his right to explain his conduct. He will also be entitled to provide mitigation if, as seems likely, the matter proceeds to a full disciplinary hearing later in the year.*'
  
12. By e mail of 10 May 2016 at 12:58 The Prisoner Location Service stated that they were unable to provide the location of the Defendant as, his consent was required under the Data Protection Act and The Prisoner Location Service and the Service stated that it '*..can confirm that consent has not been received on this occasion.*'
  
13. The Presenter applied for the proceedings to continue in the absence of the Defendant. The Presenter argued that Notice of the proceedings had been properly served on the Defendant's registered address and the email correspondence indicated that the Defendant had notice of the disciplinary action but had declined to receive further information about the procedure. Further, the Defendant had prevented formal notice of the proceedings being served by his refusal to consent to his location being disclosed and his failure to update his registered address.
  
14. The Tribunal noted that r 31.3 of the Taxation Disciplinary Board regulations (2014) states that '*Any notice or document required to be served on the Defendant may be served upon him ...by sending it first class registered or recorded delivery post addressed to the Defendant at his last known place of business or his last place of abode appearing in the register of Members held by a Participant of which the Defendant is a member*'

15. The Tribunal considered that as there was contained in the bundle of correspondence evidence of attempts to send the Notice of Hearing by both registered Air Mail and International Tracked Letter (which the Tribunal concluded were the international equivalent of first class post and recorded delivery post), and that the address on both envelopes matched that entered in the CIOT register of Members for the Defendant, the Notice had been served.

16. The Tribunal considered the interest of the Defendant in participating in the Tribunal. However, the Tribunal concluded that the public interest in the expeditious hearing of disciplinary matters outweighed the interests of the Defendant. Further, there was nothing before the Tribunal to suggest that any adjournment would actually result in the participation of the Defendant. Indeed, it was noted that the Defendant had not given permission for the Prisoner Location Service to provide the Taxation Disciplinary Board with his contact details. The Tribunal therefore decided to proceed in the absence of the Defendant.

### **Documentary evidence**

Copies of the following:

- i. Certified copy of Certificate of Conviction dated 11.02.16
- ii. Screenshot of CIOT register of members re Mr Potter
- iii. Notes of the Taxation Disciplinary Board Investigation Committee meeting on 17 March 2016
- iv. *Economia*, dated 11 December 2015;
- v. *The Times*, dated 11 December 2015;
- vi. *WalesOnline*, dated 14 December 2015.
- vii. Letter posted 4 April 2016 by registered Air Mail
- viii. Envelope addressed to the Defendant post-marked Gatwick 4 April 16
- ix. Letter posted 25 April 2016 by International Tracked and Signed

- x. Envelope addressed to the Defendant Intl tracked and signed 25 April 2016
- xi. Correspondence various dates

**The Facts:**

- 17. On 17 September 2015, the Defendant was, upon his own confession, convicted on indictment of four counts of conspiracy to cheat the public revenue (the “Conviction”)
- 18. On 18 December 2015 he was sentenced to imprisonment for 8 years, (in respect of which 66 days spent on electronically monitored curfew was to count towards that sentence) (the “Sentencing”)
- 19. The Conviction and/or the Sentencing were not notified to the CIOT, but the matter came to the CIOT’s attention from reports in:
  - i. The Times dated 11 December 2015 [1/3/28];
  - ii. WalesOnline dated 14 December 2015 [1/3/31]; and
  - iii. Economia dated 11 December 2015 [1/2/12].
- 20. In summary, those reports describe Mr Potter as having been the architect of a tax evasion scheme, pursuant to which certain investors falsely claimed entitlement to tax relief on the basis that they had worked 10 hours per week on film production, when in fact they had not carried out that work and were not entitled to that relief.

**Submissions:**

The Presenter put forward the following:

- 21. The “Integrity Charge”
  - i. Mr Potter engaged in and/or was party to illegal activity, and thereby breached r. 2.2.2 of the PRPG.
  - ii. R.2.2.2 of the PRPG provides as follows: “A member must not engage in or be party to any illegal activity.”
  - iii. As demonstrated by the Conviction, Mr Potter engaged in and/or was party to the illegal activity of conspiring to cheat the public revenue. Accordingly, he is in breach of r.2.2.2 of the PRPG above.

## 22. The Failure to Notify Charge

- i. Mr Potter failed to inform the CIOT that he had been convicted of a criminal offence and/or that he had been charged with a financial crime, and thereby breached r. 2.10.1 of the PRPG.
- ii. R.2.10.1 of the PRPG provides in relevant part as follows:
- iii. *“A member must promptly inform the CIOT or the ATT if he..is convicted of a criminal offence (other than a ‘summary only’ road traffic offence) or is charged with any financial crime such as fraud or money- laundering...”*
- iv. As is demonstrated by the letter from the CIOT to the TDB of 17 December 2015, Mr Potter did not notify the CIOT of his Conviction or the charges which must have preceded it, whether promptly or at all. The CIOT only became aware of it due to the reports in the media. In the circumstances, Mr Potter has acted in breach of r.2.10.1 of the PRPG above.

## Conclusions:

23. The Tribunal noted that the requirement to act with Integrity is a fundamental principle and obligation of a member. The requirement in r 2.2.2 of the PRPG not to engage in or be a party to any illegal activity is, as drafted, one of strict liability. The Tribunal noted that under Rule 30.5(a) the Certificate of Criminal Conviction is conclusive evidence that the Defendant was guilty of the offence.

24. The Tribunal finds charge 1 the ‘integrity’ charge proved.

25. The Tribunal also noted that the Defendant had failed to inform the Chartered Institute of Taxation promptly that he had been convicted of a criminal offence. In fact, the attention of the CIOT was drawn to the conviction by newspaper reports. The Tribunal accepted the submissions evidenced by the letter from the CIOT to the TDB of 17 December 2015, in that the Defendant did not notify the CIOT of his Conviction or the charges which must have preceded it, whether promptly or at all.

26. The Tribunal finds charge 2 the ‘failure to notify’ charge proved.

## **Sanction**

27. In deciding on the appropriate sanction, the Tribunal took into account the guidance contained in the Taxation Disciplinary Board's Indicative Sanctions Guidance of April 2016 and also noted the sanctions imposed in other similar cases, as recorded in Annex B to the Indicative Sanctions Guidance. It also reminded itself that it should start by considering the least severe sanction and only consider more serious sanctions if satisfied that the lesser sanction is not appropriate in this case.

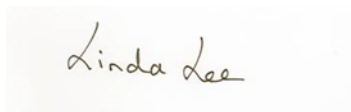
28. The Tribunal determined that the only appropriate sanction for such conduct was expulsion. The allegation involved conviction for conspiring to cheat the Revenue by a deliberate act of dishonesty. The Tribunal noted that the charges are of such gravity that no order less than expulsion would be appropriate and proportionate in the circumstances to protect the public and to protect the reputation of the profession.

## **Costs**

29. The Tribunal also ordered that the costs in these proceedings in the sum of £2,417.93 be paid by the Defendant.

## **Publication**

30. The Tribunal also ordered that, in accordance with Regulations 28.1, this order and these findings should be published as soon as practical referring to the Defendant by name. Given that the finding is one of expulsion of the Defendant, the finding will remain on the Board's website indefinitely in accordance with the Publication of Disciplinary and Appeal Findings policy dated July 2009.

A handwritten signature in cursive script that reads "Linda Lee". The signature is written in dark ink on a light-colored, slightly textured background.

Linda Lee  
Chairman

Dated this day of July 2016