

THE DISCIPLINARY TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD

TDB/2018/08

TAXATION DISCIPLINARY BOARD
(TDB)

v.

MR PHILLIP JACK LEVI CTA
(Membership Number 108109)

DECISION
(09.01.2019)

INTRODUCTION:

1. The Disciplinary Tribunal sat on Wednesday 9 January, 2019 at 30 Monck Street, Westminster, London SW1P 2AP. The Tribunal was chaired by Mr Mark Ruffell (barrister) who was sitting with Mr Peter Cadman (lay member) and Mr Michael Kaltz (CIOT member).
2. The presenter for the TDB was Mr Paul Parker. Mr Levi did not attend but was represented by a friend, Mr Henry Wyatt. At the start of the hearing Mr Wyatt indicated that he was in receipt of instructions from Mr Levi and was authorised to speak on his behalf.
3. The Tribunal had read and considered the case papers pages 1-295, an additional bundle pages 1-17 dated 07.01.2019 and a transcript of the sentencing hearing at Harrow Crown Court.
4. Mr Parker, on behalf of the TDB, submitted that Mr Levi had received the appropriate notice of the hearing and this was accepted by Mr Wyatt. The Tribunal were satisfied that there had been good service of the notice of

hearing in accordance with Regulation 14.1 of the Taxation and Disciplinary Scheme Regulations 2014.

5. Mr Levi had been sent a case management form that allowed him to respond to the charges, but he had not returned it to the TDB.

PRELIMINARY MATTER

6. Mr Wyatt raised as a preliminary matter that Mr Levi objected to the proceedings as it would appear that it had taken 28 days for the Investigation Committee to have informed the Clerk to the Disciplinary Tribunal of its findings. Regulation 8.1 of the Taxation Disciplinary Scheme Regulations states that:

'If the Investigation Committee decides that a Complaint should be referred to the Disciplinary Tribunal pursuant to Regulations 5.4(e), it shall within 21 days send to the Clerk and to the Defendant notification of its decision together with a copy of its reasons for making the decision, a summary of the evidence on which the decision is based and copies of any relevant documents and shall notify any Complainant that the Complaint has been referred to the Disciplinary Tribunal.'

7. The Tribunal considered the objection raised. The purpose of Regulation 8.1 is to ensure that cases were dealt with expeditiously and that no party was prejudiced by either undue haste or unnecessary delay. In this case, the case had proceeded expeditiously and Mr Wyatt did not argue that Mr Levi had suffered any prejudice. As a consequence, the Tribunal considered that the objection had no merit and the hearing would continue.

CHARGES:

8. Mr Parker applied to add charge 3. Mr Wyatt stated that Mr Levi was aware of the application to add charge 3 and there was no objection. The Tribunal allowed charge 3 to be added. Mr Parker applied to add the words 'and/or Rule 2.21 of the PCRT 2017' to charge 3. Mr Wyatt did not oppose the application. The Tribunal considered that the amendment was purely technical and did not cause unfairness to Mr Levi. The Tribunal allowed the amendment.

Charge 1 (The "Criminal Conduct 2015 Charge")

9. In breach of Rule 2.2.2 of the PRPG 2011 and/or Regulation 2.1(j) of the TDSR 2014 and/or 2016 and/or Rule 2.19 of the PCRT 2014 and/or 2015, the Defendant:

- (a) Engaged in illegal activity;
- (b) Acted in a way that brought him and/or his professional body into disrepute; and/or
- (c) Engaged in conduct which tends to bring discredit upon him and/or tends to harm the standing of the taxation profession and/or the CIOT.

10. Charge 1(a) was read and Mr Wyatt stated that Mr Levi accepted this charge. Charges 1(b) and 1(c) were read and Mr Wyatt stated that Mr Levi did not accept the charges.

Charge 2 (The “Failure to Notify of Criminal Conviction Charge”)

11. In breach of Rule 2.10.1 of the PRPG 2011, the Defendant failed to inform the CIOT promptly when he was convicted of a criminal offence.

12. Charge 2 was read and Mr Wyatt stated Mr Levi did not accept it.

Charge 3 (The “Criminal Conduct 2018 Charge”)

13. In breach of Rule 2.2.2 of the PRPG 2011 and/or Regulation 2.1 (j) of the TDSR 2014 and/or Rule 2.19 of the PCRT 2014 and/or 2015 and/or Rule 2.21 of the PCRT 2017, the Defendant

- (a) Engaged in illegal activity;
- (b) Acted in a way that brought him and/or his professional body into disrepute; and/or
- (c) Engaged in conduct which tends to bring discredit upon him and/or tends to harm the standing of the taxation profession and/or the CIOT.

14. Charge 3(a) was read and Mr Wyatt stated that Mr Levi accepted this charge. Charges 3(b) and 3(c) were read and Mr Wyatt stated that Mr Levi did not accept the charges.

BACKGROUND:

15. From 1994 to date, Mr Levi had been a Fellow of the Chartered Institute of Taxation. On 30 June 2015, Mr Levi pleaded guilty to 15 counts of possession of indecent images of a child. Mr Levi’s laptop had been examined by the Police in the course of a separate investigation. Found on his laptop were 484 indecent images of children, 59 of which were in Category A (images that involved penetration), 51 at Category B and 364 images at Category C. On 5 August 2015, Mr Levi was sentenced to 9

months' imprisonment that was suspended for 24 months and concurrent on each count. He was made subject to a Sexual Harm Prevention Order for 10 years.

16. On 4 August 2017, Mr Levi completed his on-line Annual Return Submission for CIOT and declared as unspent convictions '*2015 Possession of indecent images, 9 months' imprisonment suspended for 2 years (now expired).*'
17. As a result of this reporting of the 2015 convictions in 2017, and the apparent delay between the date of these convictions in 2015 and the reporting of them in 2017, complaints were raised against Mr Levi that led to charges 1 and 2.
18. In response to these complaints, Mr Levi wrote to the TDB on 16 May 2018. He explained the background to the 2015 convictions. He stated that he had received the images as a result of them being attached to emails that he had received. The sender of the emails claimed that the images were over 18, when they apparently were not over 18. Mr Levi asserted that he deleted all of the images as soon as he realised what they were. He is not disputing that he may have brought disrepute on himself, but he did not consider that the regulator should have authority over his behaviour in his private life.
19. Meanwhile, on 20 July 2018, Mr Levi pleaded guilty to 15 counts of indecent assault on 5 boys. These consisted of five counts of indecent assault committed between 1972 and 1978 in a period of time when boy A was between 14 and 19 years old; a single count of indecent assault on Boy B when Boy B was between 13 and 14 years old in the period 1975 to 1977; four counts of indecent assault on Boy C in the period 1982 to 1985 when Boy C was between 13 and 15 years old; one count of indecency with a child affecting Boy D when Boy D was between 13 and 14 years old in 1982 and four counts in relation to Boy E in the period 1981-1984 comprising of two counts of indecent assault and two counts of indecency with a child. On 7 December 2018, Mr Levi was sentenced to a total sentence of 11 years and 3 months' imprisonment. He was made subject to a Sexual Harm Prevention Order for 15 years and was required to sign on the Sexual Offenders' Register indefinitely.

SUBMISSIONS ON FACTS:

20. Mr Parker submitted that Regulations 30.5 (a) and (b) of the Taxation Disciplinary Scheme Regulations 2014 allowed the TDB to prove, by way of certificates of conviction and sentence, the underlying facts supporting charges 1 and 3, and the timescales pertinent to charge 2. Mr Parker asserted that the fundamental principle of integrity had been breached by these convictions and that this was admitted by Mr Levi. He stated that conduct unbecoming includes conduct in a personal capacity. Mr Parker, submitted that the nature and seriousness of the convictions had brought Mr Levi and his professional body into disrepute and had brought discredit upon him and the taxation profession and the CIOT. In addition, Mr Parker submitted that Mr Levi did not notify the CIOT of the convictions until submitting his CIOT Annual Return of 4 August 2017. He submitted that this could not be regarded as promptly as it was more than two years after the dates of the convictions.

21. Mr Wyatt, on behalf of Mr Levi, accepted that Mr Levi had been convicted in 2015 and 2018, but submitted that the convictions had no effect upon the taxation profession or the CIOT. Mr Wyatt repeated Mr Levi's assertion in Mr Levi's written submissions that Mr Levi accepted that he had downloaded the images but he had then immediately deleted them. In a sense, he was suggesting that these were minor or technical offences for which Mr Levi had limited responsibility. When asked for further explanation, Mr Wyatt was unable to explain how Mr Levi had done this on 484 occasions. Mr Wyatt stated that Mr Levi asserted that he had not paid for the images. Mr Wyatt submitted that Mr Levi believed that he had a right to a private life. What he did in private was not directly relevant to his ability to act as a tax advisor. Hence, Mr Wyatt submitted, and relying upon Mr Levi's written submissions, that it was contrary to human rights law for Mr Levi to be before the Disciplinary Tribunal for matters in his private life that had already been dealt with in the Crown Court. Mr Wyatt stated that there had been little or no publicity as to Mr Levi's profession and as the offences occurred in the 1980's they should be considered 'out of time.' Mr Wyatt did not accept that Mr Levi had not acted promptly to notify the CIOT as there was no evidence as to when such obligation commenced, other than when he was requested to complete the form shortly before 4 August 2017.

22. In response to Mr Wyatt's submissions, Mr Parker submitted that a member's obligations commenced upon his joining CIOT, not when asked subsequently to make a declaration. Mr Parker submitted that European human rights law did not give a right to a private life that allowed criminality to take place. He asserted that a right to exercise one's

profession is part of a right to a private life and a right to exercise one's profession is circumscribed by rules preventing criminal activity. Mr Parker submitted that there was abundant case law to illustrate that the Disciplinary Tribunal was entitled to consider matters that had resulted in criminal convictions. The TDB adopted a reasonable and proportionate approach in 'conviction cases' as set out in the regulations and the sanctions guidance. The regulations and guidance permitted the Tribunal to take into account the distinction where it applied between professional and personal or private conduct. The objective of a sanction was not to punish, unlike a criminal court, but to protect the public and uphold proper standards of conduct and public confidence in the profession. A member was obliged to follow the rules as they were at any given time.

DECISION ON FACTS:

23. The Tribunal considered the entirety of the evidence including the written submissions provided by Mr Levi. Mr Levi had argued in writing and Mr Wyatt had repeated on his behalf that it was unfair and wrong for the Tribunal to consider the same evidence that a criminal court had considered. The Tribunal considered that this submission was fundamentally misconceived. The submission failed to recognise that the role of the TDB was different from the role of the criminal court. The role of the TDB was in part to protect the public, uphold professional standards and public confidence in tax advisors and tax accountants. The role of the criminal court was in part to punish criminal wrongdoing. The tribunal had regard to Ziderman v General Medical Council [1975] UKPC 26 where the judgement was given by Lord Diplock: *'The purpose of disciplinary proceedings against a dentist who has been convicted of a criminal offence in a court of law is not to punish him a second time for the same offence but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession.'*
24. The Tribunal also had regard to Ashraf v General Medical Council [2014] EWHC 2618 (Admin) (at paragraph 34) where Sir Brian Leveson said: *'it is important to bear in mind that the purpose of criminal proceedings is the imposition of a sanction for breach of the criminal law; regulators have no choice whether or not a prosecution is mounted (usually by the CPS) following a complaint of crime even if the complainant is the NHS. The focus of regulators is to maintain the standards and integrity of the profession to ensure that public confidence is and can be maintained and it would not be in the public interest for a form of regulatory arbitrage to take place if there was an 'either/or' approach to whether proceedings should be pursued through the criminal courts or by the regulator.'*

25. The Tribunal also had regard to the Council for the Regulation of Healthcare Professionals v General Dental Council and Fleischmann [2005] EWHC 87 (Admin) where the High Court considered the appropriate disciplinary sanction for a dentist who had been convicted of having indecent images on his computer. In the light of this decision the Tribunal noted that the High Court had regularly considered disciplinary cases where sanctions had been imposed following criminal convictions, without ever ruling that it was wrong in principle for Disciplinary and Conduct Committees so to act. The Tribunal considered that the submission that a professional regulatory body could not have jurisdiction over a conviction that occurred in a member's private life was a nonsense.
26. The Tribunal went on to consider each charge individually and whether the TDB had proved it on the balance of probabilities.

Charge 1(a):

27. The Tribunal noted that through Mr Wyatt, Mr Levi had admitted this charge. The Tribunal found proved that Mr Levi had engaged in illegal activity.

Charge 1(b):

28. The Tribunal noted that Mr Wyatt did not suggest that the convictions for indecent images did not bring discredit on Mr Levi but merely that they had not brought discredit on CIOT. The Tribunal were satisfied that the convictions had brought discredit on Mr Levi. The Tribunal noted that Mr Levi described the convictions in his written submissions as being relatively minor. The Tribunal did not consider that a suspended sentence of imprisonment could have been imposed for a relatively minor matter. The Tribunal considered that the seriousness of the matters meant that they brought discredit upon CIOT through the fact that one of its members had such convictions. The Tribunal found this charge proved.

Charge 1(c):

29. The Tribunal noted that Mr Wyatt did not suggest that the convictions for indecent images did not bring discredit on Mr Levi but merely that they had not brought discredit on CIOT and the standing of the taxation profession. The Tribunal were satisfied that the serious nature of the convictions not only tended to bring discredit upon Mr Levi but also upon the standing of the taxation profession and the CIOT.

Charge 2:

30. The Tribunal considered the submissions from Mr Wyatt concerning whether it could be proved that Mr Levi must have known about the obligation to let the regulator know promptly of any convictions. The Tribunal noted that the Professional Rules and Practice Guidelines 2011 (which predated the 2015 convictions) contained the same obligation at rule 2.10.1. The Tribunal considered that it was the duty of all members to be aware of all relevant rules concerning the expectations placed upon them by a regulator upon commencing membership. The Tribunal considered that it would have been a longstanding requirement of CIOT for Mr Levi to have disclosed any criminal convictions and that Mr Levi undoubtedly would or should have been aware of this requirement. As a consequence, the Tribunal considered that a delay of two years in reporting the convictions could not be considered prompt and therefore found charge two proved.

Charge 3(a):

31. The Tribunal noted that through Mr Wyatt, Mr Levi had admitted this charge. The Tribunal found proved that Mr Levi had engaged in illegal activity.

Charge 3(b):

32. The Tribunal noted that Mr Wyatt did not suggest that the convictions in 2018 did not bring discredit on Mr Levi but merely that they had not brought discredit on CIOT. The Tribunal were satisfied that the convictions had brought discredit on Mr Levi. The Tribunal considered that the matters were very serious and noted the substantial custodial sentence that Mr Levi was serving. The Tribunal considered that these 2018 convictions brought discredit upon CIOT through the fact that one of its members had such convictions and was currently serving a sentence for them. The Tribunal found this charge proved.

Charge 3(c):

33. The Tribunal noted that Mr Wyatt did not suggest that the convictions in 2018 did not bring discredit on Mr Levi but merely that they had not brought discredit on CIOT and the standing of the taxation profession. The Tribunal were satisfied that the very serious nature of the 2018 convictions not only tended to bring discredit upon Mr Levi but also upon the standing

of the taxation profession and the CIOT. The Tribunal found this charge proved.

SUBMISSIONS ON SANCTION:

34. Mr Parker submitted that given the seriousness of the underlying convictions, the only appropriate sanction was one of expulsion.

35. Mr Wyatt submitted that any sanction other than expulsion would be appropriate as Mr Levi wished to work upon his release from prison when he would be approximately 78 years of age. Mr Wyatt spoke about the character evidence that he had given at Harrow Crown Court in December 2018 and he summarised what he had said. He had known Mr Levi in the 1960's and then again from 2011. In mitigation, Mr Wyatt stated that there was no previous regulatory history recorded against Mr Levi. In addition, Mr Levi had admitted his wrongdoing and he had demonstrated remorse in the months between his guilty pleas and his sentencing.

DECISION ON SANCTION:

36. The Tribunal had regard to the TDB's sanctions guidance. The Tribunal considered the available lesser sanctions and considered them inappropriate. The Tribunal went on to consider whether a period of suspension was appropriate. The Tribunal considered that the 2018 convictions were very serious, resulting in a lengthy prison sentence. At the heart of those convictions were repeated gross breaches of trust and the cynical manipulation of other human beings. Mr Levi had been placed on the sex offenders' register indefinitely and he was subject to a lengthy sexual harm prevention order. The Tribunal considered that Mr Levi's criminal behaviour was fundamentally incompatible with membership of CIOT. The Tribunal determined that Expulsion was the only sanction that protected the public, upheld the proper standards of the profession and maintained confidence in the profession.

COSTS:

37. Mr Parker applied for costs in the sum of £7,693.13.

38. Mr Wyatt submitted that Mr Levi should not pay the costs as he could not afford to pay them. Mr Wyatt stated that Mr Levi earned 50 pence per day in prison, he had no assets aside from a few £100 in his bank. He had a small private pension. Mr Wyatt accepted that the amount applied for was reasonable and proportionate.

39. The Tribunal had regard to paragraph 5.6 of the TDB's guidance on awarding costs which stated that *'If a member challenges a costs order on the grounds that he lacks the means to pay the sums required, the Tribunal must require evidence.'* The Tribunal noted that no such evidence was provided by Mr Levi. The Tribunal considered that from Mr Wyatt's submissions it was clear that Mr Levi had some assets but these had not been properly calculated. The Tribunal considered that the amount applied for was reasonable and proportionate. The Tribunal recognised that the TDB would enforce an order for costs at its own discretion. The Tribunal made an order for costs in the sum of £7,693.13.

PUBLICITY:

40. Mr Parker applied for an order for publicity and for it to take immediate effect regardless of whether Mr Levi sought to appeal any aspect of this decision.

41. Mr Wyatt explained that Mr Levi had been assaulted as a result of the 2015 convictions and he requested that there was an element of anonymity concerning the publication of the outcome of TDB proceedings. Mr Wyatt suggested that Mr Levi's fear of publicity had subsided due to his imprisonment.

42. The Tribunal considered that the TDB had not provided a reason for the normal procedure under regulation 28.4 not to apply ('no publication shall be made until after the expiry of the relevant appeal period'). Accordingly, the Tribunal made an order for publicity in accordance with regulation 28.4.

Mark B. Ruffell
(Chairman)
09.01.2019