

The Taxation Disciplinary Board (“TDB”)

and

Andrew Passer

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DECISION AND REASONS

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Dr Jonathan Page (Chair)  
Mr Roger Lucking (lay member)  
Mr Michael Kaltz (CIOT member)

Mr Benjamin Smiley represented the TDB  
Mr Passer appeared in person

Mr Nigel Bremner was present as the Clerk to the TDB  
A loggist was present to record the proceedings

BACKGROUND

1. On 25<sup>th</sup> June 2019 a Disciplinary Tribunal of the Taxation Disciplinary Board (“The Tribunal”) was convened to consider the case of Andrew Passer.
2. At that hearing Mr Passer faced a number of charges. [REDACTED] included at Appendix 1. By email dated 6<sup>th</sup> June 2019, Mr Passer admitted all of the charges. He confirmed his admissions before The Tribunal.

[REDACTED]

4. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### CHARGE 3

6. The third charge related to a failure by Mr Passer to notify ATT promptly or at all that he had been subject to regulatory proceedings before the Admissions and Licensing Committee of the Association of Chartered Certified Accountants (“ACCA”).
7. Those proceedings, which were heard on 29<sup>th</sup> October 2015, were concerned with Mr Passer’s failure to properly inform ACCA of the number of audit clients he retained. He had given an undertaking on 25<sup>th</sup> May 2009 that neither he nor his firm carried out any audit work and that the firm did not hold any audit appointments at that time. However, evidence was put before the Admissions and Licencing Committee that ‘audit’ work had been undertaken. It was alleged that he had continued to act as an auditor for two firms.
8. During the course of those proceedings Mr Passer offered to relinquish his and his firm’s audit certificate. As a result, the Admissions and Licencing Committee exercised its powers to withdraw his audit certificate (and issued him with a practising certificate). The Admissions and Licencing Committee also ordered that any application for audit registration would not be considered for 18 months. They expressly made no findings of fact, as agreed between the parties. However, they were aware that a Disciplinary Committee of the ACCA would be considering the same evidence in due course and would inevitably have to make findings of fact in respect of the alleged misrepresentations.

### CHARGE 4

9. The fourth charge related to a failure by Mr Passer to notify ATT promptly or at all that he had been subject to regulatory proceedings before the Disciplinary Committee of the ACCA.

10. Those ACCA proceedings were heard on 4<sup>th</sup> and 5<sup>th</sup> September 2017. (However, it is clear that Mr Passer was aware in October 2015 that Disciplinary Proceedings had been commenced against him by ACCA as there was mention of them in the Decision and Reasons relating to Charge 3 above.) Mr Passer was accused of failing to disclose to ACCA on his Practising Certificate Renewal forms that he had any audit clients.
11. Before ACCA's Disciplinary Committee, Mr Passer faced 9 different allegations. In respect of allegation 1 and allegation 2, Mr Passer accepted that he failed to disclose that he had Audit clients on his Practising Certificate Renewal forms for the years 2003, 2005 and 2007 to 2015.
12. Mr Passer accepted that he had signed some audit reports for 'Client A' from 1999 to 2004, and for 'Client B' in 2008 and 2009. It was accepted that his failures to put them on his PCRs was an oversight on his part, and did not amount to dishonest conduct.
13. He admitted 4 further allegations, specifically,
  - i. Allegation 3: that he had failed to provided supporting documents to the Senior Compliance Officer
  - ii. Allegation 4: that he had failed to retain signed copies of client engagement letters
  - iii. Allegation 5: that he failed to retain books, files or working papers (these related to 'Client B')
  - iv. Allegation 7: that his failings had amounted to 'Misconduct'.
14. The remaining allegations (6, 8 and 9) were not proved. There were no findings of dishonesty and Mr Passer's basis of events was accepted. He was sanctioned with a Severe Reprimand and ordered to pay £7,500 in costs.

#### CHARGE 5

15. The fifth charge related to a failure by Mr Passer to notify ATT promptly or at all that he had been subject to regulatory proceedings before the Disciplinary Committee of the ACCA.
16. Those ACCA proceedings were heard on 20<sup>th</sup> March 2018. He faced 2 allegations, specifically:

- i. Allegation 1:— [REDACTED]  
[REDACTED]  
[REDACTED]
- ii. Allegation 2: that he failed to promptly notify ACCA that he may have become liable to disciplinary action.

17. Mr Passer admitted both allegations to the ACCA Disciplinary Committee. He was excluded from membership of the ACCA in respect of allegation 1 and allegation 2. An order for costs for £4,500 was imposed.

## DECISION AND REASONS

18. Mr Andrew Passer has been a member of ATT since 2002.

19. A member of ATT's behaviour is defined and guided by the Professional Rules and Practice Guidelines "PRPG". The 2011 version of these rules and guidelines were in force and applied at the time of all of charges in this case.

20. The 'Introduction' to the PRPG at paragraph 1.2 states the following:

- a. The PRPG sets out the fundamental principles and guidance with which members must comply ...*

21. At paragraph 1.3 the following is stated:

*The PRPG have been designed to protect both the public and members by aiming to preserve public confidence in the tax profession and assisting members to maintain appropriate professional standards. Those members who fail to comply with the PRPG or any other laws of the CIOT or the ATT may be subject to disciplinary action.*

22. At paragraph 1.4, the following is stated:

*Chapter 2 contains the five fundamental principles that a member is required to observe and member's obligations.*

23. The Fundamental Principles of Integrity ("FPI") are defined within Chapter 2. Paragraph 2.2 states the following:

### *2.2 Integrity*

2.2.1 *A member must be honest in all his professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading nor knowingly fail to provide relevant information.*

2.2.2 *A member must not engage in or be party to any illegal activity.*

24. In respect of the 'Obligation to notify the CIOT and the ATT' the following is stated:

2.10.1. *A member must promptly inform the CIOT or the ATT if he:*

- is convicted of a criminal offence (other than a summary offence....)*
- is notified of disciplinary and/or regulatory action begun against him by another professional body to which the member belongs or by a regulator*

Charge 1

[Redacted]

[Redacted]

[Redacted]

Charge 2

[Redacted]

[REDACTED]

29. [REDACTED]

[REDACTED]

[REDACTED]

Charges 3 and 4 and 5

32. Generally, Mr Passer accepted (insofar as charges 3 and 4 and 5 were concerned) that he had never brought the ACCA proceedings to the attention of the ATT. The existence of the ACCA proceedings had been discovered by the ATT. Mr Passer accepted that this was a breach of the rules. He said that at the time his life was falling apart, [REDACTED]

33. In respect of charge 3, by Mr Passer's own admission, he accepted that he had failed to inform the ATT promptly or at all when he was notified of regulatory action begun against him by ACCA's Admissions and Licensing Committee. He was plainly aware of these proceedings in October 2015 (and no doubt for months before that) and yet failed to disclose the matter at all to ATT.

34. He said that the proceedings before the ACCA's Admissions and Licensing Committee "brought the matter to a close" as far as he was concerned. He said that "I thought it was finished with". He said that he was unaware of the ATT rules requiring him to report the proceedings to them and that his failure to know the rules was an oversight. The Tribunal accepted that Mr Passer was not aware of the rules and that this was the reason why he did not report these ACCA proceedings to the ATT, as he should have done.
35. In respect of charge 4, by Mr Passer's own admission, he accepted that he had failed to inform the ATT promptly or at all when he was notified that regulatory action had begun against him by ACCA's Disciplinary Committee. These proceedings were heard on 4<sup>th</sup> and 5<sup>th</sup> September 2017. The proceedings had certainly begun by 29<sup>th</sup> October 2015 as mention is made of the (charge 4) ACCA Disciplinary proceedings during the Admissions and Licensing hearing that took place then.
36. In respect of charge 5, by Mr Passer's own admission, he accepted that he had failed to inform the ATT promptly or at all when he was notified that regulatory action had begun against him by ACCA's Disciplinary Committee. Those proceedings had begun by 20<sup>th</sup> June 2017 and were heard by ACCA on 20<sup>th</sup> March 2018.
37. In his annual return, dated 20<sup>th</sup> June 2017, Mr Passer was asked: "*Have you ever been the subject of disciplinary action by a professional body, tribunal or regulatory authority?*" and responded "*No*". That answer was false.
38. Mr Passer did not accept that he had deliberately misled the ATT. He said in evidence that up until then (20<sup>th</sup> June 2017) that he would not have brought the ACCA matters to the attention of ATT because he "was worried about losing my livelihood". However, by 20<sup>th</sup> June 2017 he said, he had resolved to tell ATT about the ACCA matters if he was directly asked.
39. He said that his failure to mention these matters on this form was an oversight. It was a mistake as he had not given the form enough attention. He said that this was one of his failings. He pointed to the fact that on the same form, in the previous question, he had brought [REDACTED] to the ATT's attention and that it therefore could be inferred that he was not trying to hide anything.
40. He also said that he was "trying to keep my nose clean with one body" and that he "wanted to keep my livelihood..... It was a mistake. I didn't know the rules." The Tribunal found it of concern that Mr Passer had paid little or no regard to the PRPG, and yet appeared to enjoy the privileges of membership throughout the period with which the Tribunal was concerned.

41. The Tribunal was satisfied that Mr Passer was, at the very least reckless and therefore plainly in breach of the FPI as set in paragraphs 14 to 18 above.

## SANCTION

42. The Tribunal's attention was drawn to guidelines and were reminded about the principles, including the public interest. As set out in the Indicative Sanctions Guidance (dated April 2016):

*The purpose of imposing a sanction upon a member is not simply to discipline the individual for any wrong doing of which he may be culpable, but to protect the public and maintain the reputation of the profession by sending a signal as to how serious the Tribunal judges the conduct to be. In carrying out these roles the Tribunal is maintaining the reputation of the profession. The Master of the Rolls stated in Bolton v The Law Society [1994] 2 All ER 486 that the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession.*

43. The 'Introduction' section on page 3 sets out the history of the Guidance and purposes of them. The fourth and fifth paragraphs state:

*It is important that sanctions should be consistent and proportionate ....*

*Each case will be judged on its own facts. Members of the tribunal must exercise their own judgement in making decision, whilst having regard at all times to the Taxation Disciplinary Scheme Regulations and any other relevant guidance issued by the Board, including this Indicative Sanctions Guidance.*

44. 'Section 2: Purpose of Sanctions' refers to Regulatory touchstones, including the Public Interest principles: protecting the public, upholding the proper standards of conduct in the profession and maintaining the reputation of the profession. The case of Bolton vs The Law Society [1994] 2 ALL ER 486 is referred to, along with the dicta of the Master of the Rolls that the reputation of the profession as a whole is more important than the fortunes of an individual member of that profession.

45. The Tribunal reminded itself of the principle of 'Proportionality', re-affirming the need to weigh the interests of the member against the need for public protection.

46. The final two paragraphs in this section set out the following:



*In order to ensure that any sanction imposed is proportionate to the level of seriousness of the conduct found proved, taking into account all of the circumstances of the case, the Tribunal should seek to ensure that the sanction imposed is the minimum necessary to achieve the purpose.*

*For each type of complaint, there is a suggested starting point. The starting is not 'the going rate' for that particular complaint. It simply indicates where a Tribunal might start when it looks at all the factors which are relevant to deciding the penalty. Once the Tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding to reduce or increase the penalty, if appropriate. For each category of complaint, there are examples of mitigating and aggravating factors.*

47. The Tribunal took into account Mr Passer's mitigation. He was 62 years' old and had admitted these allegations. He had suffered, personally, in the ways outlined in paragraph 32 above as a direct result of [REDACTED] [REDACTED] had had a very direct and dramatic effect on every aspect of his life.
48. The Tribunal sought to ensure that the sanction imposed was the minimum necessary to ensure that it was proportionate to the level of seriousness of the conduct found proved, taking into account all of the circumstances of the case.
49. Section 3 of the Sanctions Guidance considers types of sanction that can be imposed. The Committee considered whether 'Censure' was an appropriate and proportionate sanction. 'Censure' was appropriate where there was no continuing risk to the public and, further, where the member had an appreciation of the conduct which has been found proved.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

52. In respect of charges 3 and 4, 3, 4 and 5, the Tribunal was of the view that there remained a continuing risk that Mr Passer would fail to report matters in the future, if the occasion arose. The [REDACTED]-failures to promptly report [REDACTED] raised real concerns as to a pattern of secrecy in circumstances where it suited Mr Passer not to disclose important matters. This was in direct contravention of the PRPG. Of the 'failing to notify' charges, the Tribunal considered that charges [REDACTED] 5 were extremely serious matters as they reflected a failure by Mr Passer to inform both ACCA and ATT about [REDACTED]. A 'Censure' was therefore not appropriate.

53. The Tribunal next considered 'Suspension', but for the reasons outlined above, (i.e. that there was a significant risk of a future re-occurrence of the misconduct), this sanction was not appropriate.

54. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

55. In respect of charges [REDACTED] 3 and 4, Mr Passer's admission that he failed to inform ATT because he "wanted to keep his nose clean with one body" demonstrated a dishonest line of thinking that gave rise to serious concerns.

56. In respect of 'Expulsion' the following is written within the Sanctions Guidance:

*Expulsion is the most serious sanction available. It will be appropriate where this is the only means of protecting the public and/or the conduct is so serious as to undermine confidence in the profession if a lesser sanction were to be imposed. Relevant factors to take into consideration (this list is not exhaustive) include.*

*a) serious departure from relevant professional standards*

*b) abuse of position/trust*

*c) dishonesty*

*d) persistent lack of understanding and appreciation of seriousness of actions or consequences.*

*The courts have reiterated that expulsion should be the normal sanction in a case where dishonesty has been proved.*

57. The Tribunal considered, that as far as Charges 3 and 4 were concerned that (had they been the only charges), either collectively or together, that the sanction would have been a 'Censure'.

58. However, in respect of Charges 1, 2 and 5, The Tribunal considered in respect of all of the charges, that expulsion was the minimum sanction that would adequately protect the public interest by upholding the proper standards of conduct in the profession and maintaining the reputation of the profession.

59. It followed that, taken together in respect of all of the charges, that Expulsion was the tribunal's determination.

## COSTS

60. The TDB applied for costs in the sum of £11,307.92. Mr Smiley submitted that the costs had all been reasonably incurred in preparation for the hearing. The Tribunal took account of the TDB's Guidance on Awarding Costs. The presumption is that an unsuccessful defendant should pay. The Tribunal determined that Mr Passer should pay costs.

61. Although Mr Passer had admitted the charges, that admission had only been made a matter of days before the hearing (by e-mail dated 6<sup>th</sup> June 2019). He was asked about his means and stated that his income was far lower than it had been, as a result of the [REDACTED] proceedings before [REDACTED] the ACCA and the ATT. His gross profit for 2018 was £40,000. He accepted that he had some equity in his home. He said that his practice, if he sold on his clients, had no value.

62. The Tribunal enjoys a wide discretion bound by principles of reasonableness and justice. In the circumstances, the Tribunal determined that £10,000 represented an appropriate figure for costs. The amount had been reduced to reflect Mr Passer's admissions.

## PUBLICITY

63. Regulation 28 of the Taxation Scheme Regulations 2014 provides that:

*28.1 Where a Disciplinary Tribunal ... makes an order under these Regulations, it shall order the publication of its order and its written reasons for making that order as soon as practicable and in such manner as it things fit.*

64. The Guidance provided by the TDB states the following:

*5.1 Whilst Regulation 28 makes a presumption in favour of publishing the findings made by a Tribunal, there is a discretion not to order publication of the name of the member ... or the details of orders made against them.*

*5.2 This discretion should be exercised sparingly. ...*

...

*5.5 Any decision not to publish a decision should only be taken in response to a request from the member and if the tribunal hearing the case ... is satisfied that there are wholly exceptional circumstances which would justify an absence of publicity.*

...

65. The TDB submitted that publicity should follow in the usual way, i.e. that disciplinary findings made against a member will be published and the member named in the publication of the finding. This was to ensure that members of the ATT were aware of the proceedings and also so that the public would have confidence in the disciplinary process. The purpose of publishing was to provide reassurance that the public interest is being protected and that the process is transparent.

66. Mr Passer submitted that there were wholly exceptional circumstances that justified not publishing his name. [REDACTED]

67. In the circumstances, the Tribunal were persuaded that there were wholly exceptional circumstances that justified not publishing all aspects of the decision and reasons [REDACTED]

[REDACTED] The Tribunal were of the view that publication would be unduly harsh, given [REDACTED] the potential for an adverse effect on Mr Passer's mental health.

68. A redacted version of the full decision detailing only Charges 3 and 4 will be produced, which will be published in the usual way including Mr Passer's name.

Dr Jonathan Page

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

**Reference: TDB/2018/07**

**TAXATION DISCIPLINARY BOARD**

**Presenter**

**- and -**

**MR ANDREW PASSER ATT  
(Membership Number 126670)**

**Defendant**

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**SCHEDULE OF CHARGES**

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The charges set out below make reference to

- (a) The following rules of the Professional Rules and Practice Guidelines 2011 of the Chartered Institute of Taxation (the “CIOT”) and the Association of Taxation Technicians (the “ATT”) (the “PRPG 2011”):
  - (1) Rule 2.2.1 (Integrity);
  - (2) Rule 2.2.2 (Integrity);
  - (3) Rule 2.10.1 (Obligation to notify the CIOT and the ATT);
- (b) Regulation 2.1(j) (Conduct Unbefitting) of the Taxation Disciplinary Scheme Regulations (the “TDSR”) 2014 and/or 2016;
- (c) Rule 2.19 (Professional behaviour) of the Professional Conduct in Relation to Taxation (the “PCRT”) 2014 and/or 2015

**Charge 1** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Charge 2** [REDACTED]

In breach of Rule 2.10.1 of the PRPG 2011, the Defendant failed to inform the ATT promptly when [REDACTED]

[REDACTED]

[REDACTED]

(2) [REDACTED]

[REDACTED]

### **Charge 3 (the “First Failure to Notify of Disciplinary or Regulatory Actions Charge”)**

In breach of Rules 2.10.1 and/or 2.2.1 of the PRPG 2011, the Defendant failed to inform the ATT promptly or at all when he was notified of a disciplinary and/or regulatory action begun against him by another professional body to which he belongs or by a regulator.

The TDB’s case is as follows:

- (1) The Defendant is a fellow of the Association of Chartered Certified Accountants (“ACCA”).
- (2) On 29 October 2015, the Admissions and Licensing Committee of ACCA (the “**A&L Committee**”) convened to consider a report relating to the Defendant. It is to be inferred that the Defendant was notified of the disciplinary and/or regulatory action begun against him by ACCA prior to that hearing.
- (3) As a result of the submissions made at that hearing, the A&L Committee ordered that:  
(a) the Defendant’s practising certificate with audit qualification and his firm’s auditing certificate be withdrawn and he be issued with a practising certificate (without audit qualification); and (b) no future re-application for audit registration by the Defendant or by a firm in which he is principal would be considered for a period of at least 18 months from 29 October 2015.
- (4) The Defendant did not notify the ATT of the disciplinary and/or regulatory action referred to above, promptly or at all.

### **Charge 4 (the “Second Failure to Notify of Disciplinary or Regulatory Actions Charge”)**

In breach of Rules 2.10.1 and/or 2.2.1 of the PRPG 2011, the Defendant failed to inform the ATT promptly or at all when he was notified of a disciplinary and/or regulatory action begun against him by another professional body to which he belongs or by a regulator, and indeed actively misstated the position.

The TDB’s case is as follows:

- (1) On 4 and 5 September 2017, a hearing took place before the Disciplinary Committee of ACCA (the “**Disciplinary Committee**”), in respect of seven allegations against the Defendant.



- (2) Certain allegations had been admitted by the Defendant in May 2017. It is to be inferred, therefore, that the Defendant was notified of the disciplinary and/or regulatory action begun against him by ACCA prior to May 2017.
- (3) In the Defendant's 2017 annual return, which was submitted on 20 June 2017, he responded to the question "*Have you ever been the subject of disciplinary action by a professional body, tribunal or regulatory authority?*" with the answer "*No*". That answer was false.
- (4) In the light of the Defendant's admissions, and the findings made, on 5 September 2017 the Disciplinary Committee determined that (a) the Defendant be sanctioned with a Severe Reprimand; (b) any future application by the Defendant for an audit certificate be referred to the A&L Committee; and (c) the Defendant pay ACCA's costs in the sum of £7,500.
- (5) The Defendant did not notify the ATT of the disciplinary and/or regulatory action referred to above, promptly or at all.

**Charge 5 (the "Third Failure to Notify of Disciplinary or Regulatory Actions Charge")**

In breach of Rules 2.10.1 and/or 2.2.1 of the PRPG 2011, the Defendant failed to inform the ATT promptly or at all when he was notified of a disciplinary and/or regulatory action begun against him by another professional body to which he belongs or by a regulator.

The TDB's case is as follows:

- (1) On 24 July 2017, ACCA sent an initial letter to the Defendant setting out allegations which were subject to investigation, arising out of his Conviction and failure to notify ACCA promptly thereof.
- (2) The matter progressed to a hearing before the Disciplinary Committee on 20 March 2018, when the Defendant was excluded from membership of ACCA.
- (3) The Defendant did not notify the ATT of the disciplinary and/or regulatory action referred to above, promptly or at all.

**DATED: 24 JANUARY 2019**