IN THE MATTER OF THE TAXATION DISCIPLINARY BOARD
12th December 2019 in public
28th February 2020 in camera

TAXATION DISCIPLINARY BOARD ("TDB")

vs

Mr Ray DAVIS
(membership number 109057)

DECISION AND REASONS

Dr Jonathan Page (Chair)
Mr Peter Cadman (Lay Member)
Mr Michael Kaltz (CIOT member)

Miss Stricklin-Coutinho represented the TDB on 12th December 2019.
Miss Troup represented Mr Davis
Mr Davis was present on 12th December 2019

Mr Nigel Bremner was present as the Clerk to the TDB on 12th December
A loggist was present to record the proceedings in public

1. On 12th December 2019, and 28th February 2020, the Disciplinary Tribunal of the TBD heard a complaint against Mr Ray Davis, a member of CIOT, made by TDB having had the matter referred to it by HMRC on 21st March 2019.

2. That complaint contained 4 charges which are annexed hereto as Appendix 1.

3. The relevant paragraphs of the Professional Rules and Practice Guidelines 2011 and 2018 ("PRPG 2011" and "PRPG 2018" respectively) and the Professional Conduct in Relation to Taxation ("PCRT 2015") are annexed hereto as Appendix 2.

4. On 12th December Mr Davis denied all of the charges apart from charge 2(c.). The hearing commenced but was adjourned part heard at the end of the first day whilst

Mr Davis was still giving evidence. By Email dated 27th February 2020, the Tribunal was informed that Mr Davis fully admitted all of the charges against him. That e-mail is reproduced at paragraph 47 below.

BACKGROUND

5. Mr Davis is a member of CIOT. As such, he was the sole Tax Adviser within a small practice which operated in Hampshire. He is also a member of the ICAEW.

6. The first three charges alleged 3 different areas of failure by Mr Davis to properly account for tax; one relates to the Enterprise Investment Scheme, two relate to VAT.

7. The fourth charge alleged a failure by Mr Davis to cooperate with the TDB.

THE ENTERPRISE INVESTMENT SCHEME ("EIS") and SEED ENTERPRISE INVESTMENT SCHEME ("SEIS") ALLEGATIONS

8. In general terms, investments in an EIS and SEIS by a UK taxpayer enabled that taxpayer to claim tax relief against those investments and in addition, any capital gain made as a result of that investment was not subject to capital gains tax. In this way, the taxpayer was able to take advantage of these schemes in order to reduce the tax they would have had to pay to HMRC from other sources of income.

9. The schemes existed in order to encourage investment into companies which fulfilled HMRC criteria. The investments concerned would need to be certified by HMRC as a qualifying EIS or SEIS investment so that the tax relief could be sought and obtained.

10. In order to claim relief, the investment into the companies which fulfilled the HMRC criteria had to be made BEFORE the relief was claimed.

11. Between 20th February 2013 and 10th February 2017 Mr Davis submitted Tax Returns for clients in which the clients sought to claim tax relief using the EIS and SEIS schemes. Over that period, it appears that about 150 EIS/SEIS investments were

declared to HMRC. The total value of those investments was in excess of £4.5m and were paid to 13 different companies.

12. The total value of the investments that were declared on tax returns claiming EIS or SEIS relief in circumstances where the relief was unavailable (because the certificate had not been issued, and/or the investment had not yet been made) was in excess of £1.5m.

13. By way of example, one of the claims for which investment relief was incorrectly claimed was for an investment by Ray Davis himself. He subscribed for the shares on 15th March 2014, his claim for tax relief was submitted on the 21st November 2015, but the SEIS qualifying certificate was not issued until 7th March 2016. Plainly that claim should not have been made as the qualifying certificates had not been issued at the time the relief was sought.

14. Most of the 13 different companies into which all of investments were made were ones where Mr Davis was either a sole director, or was a director with other family members.

15. In evidence to the Tribunal Mr Davis said that Solution Motor Cruisers Ltd ("SMC"), a company to whom a significant amount of investment was paid, was family owned. He said that he was the sole director of DL Solutions Ltd and DL Plant Hire Ltd, but not a shareholder. He was also the sole director of DLFP Ltd, Design and Marketing (Fareham) Ltd, Solution 80 Ltd and Solution 60 Ltd.

16. Mr Davis said in evidence to the Tribunal that he was not 100% certain whether he was the only director of Uniglobe Ltd. In respect of the SMC group of companies, he said that at the time the EIS/SEIS investments were made (and corresponding tax relief claims were made) he was a director of the SMC group of companies and he and his family were shareholders. The Tribunal was not entirely clear from his explanation in oral evidence as to the structure of these companies and where control rested.

17. In respect of these companies, at the end of the hearing on 12th December, the Tribunal requested copies of the submitted Companies House returns and the bank statements so that it could see the extent to which the investment schedule was accurate (in terms of whether the investments had been made at a time when the schedule indicated that the investment was received) and who in fact the directors of the recipient companies were at the time that the investments were made.

18. On 11 August 2016, Mr Davis met with HMRC voluntarily, having been informed that HMRC suspected him of engaging in dishonest conduct.

19. On 6th September 2016, HMRC e-mailed Mr Davis enclosing the notes of the meeting on 11th August. The Tribunal was not supplied with the notes of that meeting.

20. On 29th December 2016, Mr Davis was issued by HMRC with a 'Conduct Notice – Determination of Dishonest Conduct'. The notice stated in terms:

> *You knew that the various claims to relief were not available because you claimed the relief before any investment had been made by your clients into the various companies that you had set up. Your actions in making these claims were dishonest because you have admitted that you knew that the relief could not be claimed before an investment had been made.*

21. On 16th February 2017, HMRC wrote requesting files, working papers, documents, communications with clients, time records, fees ledger accounts and fee notes. A meeting was requested on Tuesday 14th March with Mr Davis' at his home. No meeting took place.

22. On 25th May 2017, HMRC wrote and requested a meeting with Mr Davis on 15th June. However Mr Davis did not respond and no meeting took place.

23. On 15th June 2017, by email HMRC requested a meeting with Mr Davis [25] to take place on 12th July. Further requests for information were also made.

24. On 6th July 2017 HMRC wrote to Mr Davis and gave him an opportunity to produce full and frank disclosure of investments that were made in the companies that were listed in a schedule.

25. In a second letter of the same date, HMRC made it clear that they would be applying to a First Tier Tribunal for a file access notice in order to formally request documents from Mr Davis. A meeting was suggested for 12th July.

26. On 7th August 2017, Mr Davis disclosed to HMRC a schedule of 48 investments. He sent a memory stick containing this information.

27. On 19th December 2017, HMRC requested a review of the client files as well as a meeting during the week of the 9th February 2018. No meeting took place.

28. On 22nd February 2018, Mr Davis sent HMRC a letter containing 2 schedules. 'Schedule 1' is an updated version of the list sent to the HMRC on 7th August showing a further 10 investments (a total of 58 investments) that had been omitted from the original list given to HMRC on 7th August 2017. He provided no explanation for the inclusion of this further 10 investments (which amounted to approximately £300,000 of additional investment). However, it was clear from the correspondence that Mr Davis must have been aware that HMRC by then knew of the 10 additional non-qualifying investments.

29. Schedule 2 is described by Mr Davis in his letter as an overall list of all claims made showing the dates that the relevant certificates were received and claims for relief made to HMRC.

30. On 1st June 2018, HMRC wrote suggesting a meeting during the week commencing 18th June in order to clarify matters and to consider the level of penalty. HMRC raised concerns that full disclosure may still not have been made.

31. On 7th September 2018, HMRC wrote and re-iterated their belief that there had still not been full disclosure and suggested a meeting on 10th October.

32. On 10th October 2018, there was a meeting with HMRC. The notes of that meeting were before the Tribunal. During the meeting, Mr Davis was advised of his right to appeal but the notes record him as saying that he thought that it was 'not worth appealing HMRC's determination within the Conduct Notice' (i.e. that Mr Davis' behaviour had been dishonest according to HMRC). The following is recorded within the notes:

> *5. [Kay Walker of HMRC] said that if there is anything that RD hasn't already told her regarding his dishonesty as a tax agent then today was an opportunity for him to do so. RD said that he was not aware of any further dishonesty on his part as a tax agent.*
>
> *34. KW said that the process will now involve her:*
>
> - *Quantifying the full amount of tax lost as a result of RD's dishonesty,*
> - *Considering the extent to which this has been identified through disclosure and co-operation*
> - *Calculating the penalty taking all mitigating factors into consideration.*

33. On 7th February 2019 [56] he was sent a letter setting out a summary of his conduct thus far. He was issued with a penalty of £20,000. The letter stated:

> *You made a full disclosure of incorrect claims across your client base but this was following our request for the information. There were delays in you providing the information requested and whilst Tribunal approval to issue a file access notice was not required, you were issued with an opportunity letter to make representations to the Tribunal. You only provided the documents shortly before HMRC made a formal application to the tribunal for approval to issue a file access notice to you.*

34. On 6th March 2019, Mr Davis appealed the penalty on the sole ground that it was excessive. He stated the following:

Given that I have fully disclosed the level of dishonest, provide detailed schedules setting out the extent of the dishonest and provided access to all the files requested. I believe that I have met the requirements for the minimum penalty of £5,000 to be applied.

You also confirmed at the meeting that if I disclosed all dishonesty at that time then there would only be one £5,000 penalty. There was never any mention that the penalty may be more than this level given that the only dishonest was disclosed at the original meeting. The later clarification by schedule was only providing further information to support the disclosure of the dishonest action that had already been confirmed to HMRC prior to my initial meeting with you given that it had been brought to our attention as part of HMRC enquiries into a number of clients and had already been acknowledged to HMRC.

35. In evidence to the Tribunal on 12th December 2019, Mr Davis said that he had written "provisional" in the notes section of the HMRC returns that were submitted where the EIS and SEIS investment relief was claimed but qualifying certificates had not been issued by HMRC. This explanation had not appeared in any of the correspondence or material that had been submitted to the Tribunal nor was it mentioned in the notes of the meeting between HMRC and Mr Davis, which was held on 10th October 2018.

THE VAT-RELATED ALLEGATIONS

VAT ALLEGATION 1 – DISHONESTLY INCLUDING A VAT RECLAIM OF £247,500 IN ARGENTIA's VAT RETURN

36. As far as the VAT-related allegations are concerned, the first related to alleged dishonest conduct by reclaiming VAT on behalf of his client (Argentia) in the sum of £247,500 in that company's March 2014 quarterly VAT return. The reclaim of £247,500 was made on the basis of an invoice received by Argentia from SMC

following the purported purchase by Argentia of a boat for £1,237,500. The transaction was in fact cancelled during that VAT period and Argentia was issued with a credit note by SMC dated 28th March 2014. It follows that the boat transaction should not have featured as a reclaim in the VAT return during that period. Argentia reclaimed the VAT despite having received a credit note from SMC 3 days before the end of the VAT quarter. Argentia then went into liquidation before the VAT reclaimed (£247,500) had been repaid. HMRC were therefore out of pocket in that sum. Mr Davis acted as the accountant for both Argentia and SMC at the relevant time.

37. According to the HMRC letter to Mr Davis dated 29th December 2016, this failure to properly account for the VAT was identified during a VAT compliance check into Argentia. The letter stated:

> *You also acted dishonestly when you prepared and submitted a VAT return that deliberately understated the VAT liability for your client [Argentia] for the period ended 31 March 2014. You deliberately and dishonestly included a claim within that VAT return for input tax of £247,500 for the purchase of a boat from your own company [Solutions Motor Cruisers Ltd] when you knew that the intended transaction had been cancelled within the VAT period as evidence d by the credit note you issued dated 28th March 2014.*

VAT ALLEGATION 2 – DISHONESTLY UNDERSTATING AURUM CANNON LLP'S VAT DUE

38. The second VAT-related charge concerned the trading of Mr Davis' client, Aurum Cannon LLP ("AC"). AC issued VAT invoices from 3rd February 2013 to companies including Argentia.

39. However, AC was only registered for VAT from 11th March 2013 (Mr Davis had applied for AC to be registered from that date, on 24th September 2013). However, AC also raised VAT invoices between 3rd February 2013 and 10th March 2013. That VAT had not been accounted for or paid to HMRC; AC had understated its VAT liability by £42,468.41.

40. In its letter to Mr Davis dated 29th December 2016, HMRC stated in respect of this issue:

> *You … acted dishonestly when you prepared and submitted a VAT Return deliberately understanding the VAT liability for you client Argentia for the period ending 30 April 2013.*
>
> *Your action was dishonest because you knew that the VAT Return included a claim for Input Tax on services provided to Argentia by Aurum Cannon over a period during which you knew that Aurum were not, in fact, registered for VAT. You knew that because Aurum were also your client.*

41. On 21st March 2019 HMRC referred the conduct of Mr Davis to the TDB.

THE FAILURE TO COOPERATE WITH THE TDB ALLEGATION

42. The fourth charge alleged that Mr Davis failed to cooperate with the TDB promptly, or at all. The TBD had mistakenly included the wrong date by which Mr Davis was asked to respond in its letter to Mr Davis dated 18th April 2019.

43. The TDB wrote to Mr Davis on 14th May 2019. He responded fully, denying the allegations, by letter dated 16th May. The TDB received this letter on 6th June.

44. The TDB wrote to Mr Davis on 6th June concerning a consent order that he had entered into with the ICAEW in March 2019. He did not respond to this letter. However, by 28th June, the TDB wrote to Mr Davis and informed him that the investigation Tribunal had determined that there was a prima facie case against him, and the matter was being referred to this Disciplinary Tribunal.

THE TRIBUNAL HEARINGS

45. The Disciplinary Tribunal convened on 12th December 2019, and considered the charges which Mr Davis had denied. The case was opened and Mr Davis gave

evidence. The case was adjourned part-heard. At the end of that first day, the Tribunal made a number of requests for further documentation of both parties:

> *FURTHER INFORMATION REQUESTS*
>
> *11th August 2016 notes*
>
> *Any correspondence with HMRC disputing the accuracy of the notes*
>
> *In respect of the Schedules on pages 94 to 100 [SCHEDULES 1 and 2]*
>
> *Tax Returns lodged with HMRC showing "Provisional" comments for the individuals claiming EIS or SEIS relief*
>
> *Bank Statements for the companies showing the money received into the accounts*
>
> *Accounts for the same companies for the returns indicated in the schedules*
>
> *Companies' House documents when these companies have been wound up, or liquidated.*
>
> *The Aurum Cannon VAT schedule for September 2013*
>
> *Any Tax Guidance issued to Tax Advisers regarding Tax Relief on EIS and Seed EIS*
>
> *Legislation re: Claims for EIS and SEIS and relevant parts of the HMRC manuals.*

46. None of the documentation was received by the Tribunal.

47. On 27th February (the day before the hearing was due to resume), the following email was received by the TDB from Mr Davis' solicitor:

> *I apologise for the fact that we were not able to respond in time to meet the deadline of 4pm yesterday. I confirm that I now have full and clear instructions from Mr Davis. He in turn now confirms through me that he admits all charges against him unequivocally and on a full facts basis.*

I also confirm that Mr Davis advances no mitigation for consideration by the Tribunal in this matter, personal or otherwise.

DECISION

48. The Tribunal considered the charges in turn.

49. On the basis of the written material before the Tribunal, the evidence that was heard on 12th December 2019 and the full admissions contained in the email dated 27th February 2020, the Tribunal was entirely satisfied that Charges 1, 2 and 3 were proved.

50. In respect of Charges 1 and 2, the Tribunal was satisfied that Mr Davis had failed to be either straightforward or honest in his dealings with HMRC in relation to

    a. The claims he submitted for both EIS and SEIS tax relief;
    b. His failure to submit an accurate VAT return for Argentia for the period ending March 31st 2014; and
    c. His failure to accurately account for the VAT of AC for the period between 3rd February and 10th March 2013 that led to a shortfall of VAT due to HMRC of £42,468.41.

51. In respect of the claims for EIS and SEIS tax relief and the VAT returns mentioned above, Mr Davis had not submitted correct and complete returns and had not acted in good faith in his dealings with HMRC. The returns were incorrect and/or misleading.

52. The Tribunal applied the test for dishonesty contained in the case of Ivey vs Genting [2017] UKSC 67, as set out in Appendix 3. The Tribunal was entirely satisfied that Mr Davis knew that he was failing to comply with the rules of the EIS and SEIS schemes, and further that he knew that he was not accurately accounting for VAT in 2 different situations. Applying an objective test, the Tribunal did not hesitate to conclude that he had acted dishonestly in respect of these matters.

53. The Tribunal also found that he had failed to co-operate with HMRC's enquiries. He had failed to respond to their requests for information and to meet when asked to do so. He only supplied information when he was effectively threatened with a formal order from a First Tier Tax Tribunal.

54. Overall in his dealings with HMRC he had failed to protect the public, uphold professional standards and maintain the reputation of the profession. His behaviour was in breach of the Fundamental Principles of Integrity and Professional Behaviour.

55. In respect of charge 3, the Tribunal was satisfied that Mr Davis brought himself, and his professional body into disrepute.

56. In respect of charge 4, the TBD had mistakenly included the wrong date in its letter to Mr Davis dated 18th April 2019. Once the TDB had corrected its mistake and written again to Mr Davis on 14th May, he had responded in full by 6th June.

57. The Tribunal was satisfied that Mr Davis had responded to the correspondence from the TDB without unreasonable delay. His alleged failure to inform the TDB about the ICAEW consent order did not, in the Tribunal's view, constitute a disciplinary matter.

58. Notwithstanding Mr Davis' full admissions to all charges in his email of 27th February 2020, the Tribunal did not find this charge proved.

SANCTION

59. The TDB provided the Tribunal with written submissions following Mr Davis' admissions to the charges. Mr Davis, through his solicitor, decided to advance no mitigation.

60. The Tribunal reminded itself that the purpose of sanctions was not simply to punish the member, although a punitive effect may result.

61. The Tribunal had very much in mind the public interest, namely protecting the public, upholding the proper standards of conduct in the profession and maintaining the reputation of the profession.

62. Mr Davis had failed to show any proper insight into his failings. He capitulated at the last minute in the face of overwhelming evidence (which included his own earlier admissions of dishonesty to HMRC).

63. The Tribunal considered all of the available sanctions, starting with the least onerous. It considered that a warning, censure, or suspension would fail to protect the public or maintain the reputation of the profession. The breadth and scale of the dishonesty, using two different taxation regimes, over a considerable period of time, involving large sums of money led to an overwhelming conclusion that the minimum sanction necessary was expulsion.

64. The Tribunal considered whether Mr Davis' behaviour also justified a financial sanction. The Tribunal reminded itself that the risk of loss to the Revenue (and therefore the public) was substantial.

65. When the email from Mr Davis' solicitors (referred to in paragraph 47 above) was sent to the TDB on 27th February, his solicitor had already read the TDB's submissions where the question of expulsion together with a fine was expressly mentioned. On Mr Davis' instructions "no mitigation … personal or otherwise" was advanced and he failed to address the Tribunal in writing or at all on his financial position.

66. The Tribunal determined that this was sophisticated financial dishonesty leading to a substantial loss to the public. The first three charges arose out of the same facts. The Tribunal concluded that the appropriate fine overall was £20,000.

67. The TDB sought costs in the sum of £12,836.95. The possibility of an application for costs was raised by the TDB at an early stage of proceedings. The precise quantum was not known until late on 27th February 2020 and was then sent to Mr Davis' solicitor. However, as of the 28th February no representations or submissions had

been received from Mr Davis or his solicitor challenging the scale or extent of the costs. In the circumstances, the Tribunal awarded costs in the full amount.

68. In accordance with Regulations 28.1 and 28.5 of the Taxation Disciplinary Scheme Regulations 2014 (as amended), the Tribunal ordered publication of its order and reasons, without restriction.

Dr Jonathan Page 28th February 2020

APPENDIX 1

CHARGES

IN THE MATTER OF THE TAXATION AND DISCIPLINARY BOARD
Reference: TDB/2019/16

TAXATION DISCIPLINARY BOARD

- and –

MR RAY DAVIS
(Membership Number 109057

SCHEDULE OF CHARGES

The charges set out below make reference to the following rules of:

(a) the Professional Conduct in Relation to Taxation effective from 1 May 2015 (the "PCRT 2015"): Rules 2.2, 2.3, 2.19 and 3.3.

(b) the Professional Rules and Practice Guidelines 2011 of the Chartered Institute of Taxation (the "CIOT") and the Association of Taxation Technicians (the "ATT")effective from March 2011 (the "PRPG 2011"): Rules 2.1, 2.2.1, 2.6.1 and 2.6.2;

(c) the Professional Rules and Practice Guidelines 2011 of the Chartered Institute of Taxation (the "CIOT") and the Association of Taxation Technicians (the "ATT") effective from 9 November 2018 (the "PRPG 2018"): Rules 2.1, 2.2.1, 2.6.2, 2.6.3, 2.13.2 and/or 2.13.3.

Charge 1 (The "PCRT Integrity Charge")

In breach of Rules 2.2, 2.3 and/or 3.6 of the PCRT 2015, the Defendant:

(a) Failed to be straightforward and honest;
(b) Failed to act honestly in his dealings with HMRC;
(c) Failed to act in good faith in his dealings with HMRC.

The TDB's case is as follows:

(1) The Defendant is a tax agent.

(2) On multiple occasions:

a. The Defendant prepared and submitted Self-Assessment Tax Returns on behalf of his clients that included claims for Enterprise Investment Scheme and Seed Enterprise Investment Scheme relief when he knew that those reliefs were not available to be claimed by those clients.

b. The Defendant knew that the various claims to relief were not available because he claimed the relief before any investment had been made by his clients into the various companies that he had set up.

c. The Defendant's actions in making these claims were dishonest because the Defendant admitted to HMRC that he knew that the relief could not be claimed before an investment had been made.

d. The Defendant's submission of these incorrect Tax Returns enabled his clients to understate their tax liability and his dishonest action in this respect has been repeated for many clients. The total amount of tax lost is as yet unquantified.

(3) The Defendant also acted dishonestly when he prepared and submitted a VAT return that deliberately understated the VAT liability for his client for the period ended 31 March 2014. The Defendant deliberately and dishonestly included a claim within that VAT return for input tax of £247,500 for the purchase of a boat from the Defendant's own company when he knew that the intended transaction had been cancelled with the VAT period as evidenced by the credit note he issued dated 28 March 2014.

(4) The Defendant further acted dishonestly when:

a. He prepared and submitted a VAT Return deliberately understating the VAT liability for his client for the period ended 30 April 2013.The Defendant'saction was dishonest because he knew that the VAT Return included a claim for input tax on services provided over a period during which the Defendant knew that the relevant client was not registered for VAT.

b. The Defendant subsequently applied to HMRC to register the client for VAT on 24 September 2013. In his application the Defendant asked for the registration date to be backdated to March 2013 even though he was aware that the client had, in fact, been raising invoices showing VAT since at least 3 February 2013.

c. As a result of the Defendant's dishonest conduct his client understated their VAT liability for the period ended 30 April 2013 by £42,468.41.

(5) HMRC carried out investigations and correspondence with the Defendant from around August 2016. In the course of those communications:

a. The Defendant failed to co-operate fully with HMRC in respect of its investigations;

b. The Defendant admitted dishonest conduct, but did not disclose the extent of his dishonesty;

c. HMRC issued a conduct notice pursuant to Schedule 38, Finance Act 2012 ("Sch.38"), dated 29 December 2016, containing HMRC's determination of dishonest conduct;d. The Defendant did not appeal that conduct notice;

e. The Defendant failed to respond to HMRC promptly or at all on several occasions;

f. HMRC issued the Defendant with a penalty assessment for his dishonest conduct, pursuant to Sch.38, dated 7 February 2019, in the sum of £20,000;

g. The Defendant submitted an appeal against that penalty assessment, but the outcome of that appeal is unknown.

Charge 2 (The "PRPG Integrity and Professional Behaviour Charge")

In breach of Rules 2.1, 2.2.1, 2.6.1 and/or 2.6.2 of the PRPG 2011 and/or Rules 1.6, 1.7, 2.4.1, 2.6.2 and/or 2.6.3 of the PRPG 2018, the Defendant:

(a) Failed to be straightforward and honest in all professional and business relationships;

(b) Failed to be honest in all his professional work (including knowingly or recklessly supplying information or making statement(s) which were false or misleading, and/or knowingly fail to provide relevant information);

(c) Failed:

(i) to uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT; and/or
(ii) to take due care in his professional conduct; and/or
(iii) to take due care in his professional dealing;

(d) (i) Performed his professional work, or conducted his practice or business relationships, or performed the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT or to the tax profession; and/or
(ii) breached the Laws of the CIOT or ATT; and/or
(iii) conduct himself in an unbefitting, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon him and/or may harm the standing of the profession and/or the CIOT.

The TDB relies on the matters stated in respect of Charge 1 above.

Charge 3 (The "Disrepute Charge")

In breach of Rule 2.19 of the PCRT 2015, the Defendant:

(a) Brought himself and his professional body into disrepute.The TDB relies on the matters stated in respect of Charges 1 and 2 above.

Charge 4 (The "Failure to Respond without Unreasonable Delay Charge")

In breach of Rules 2.13.2 and/or 2.13.3 of the PRPG 2018, the Defendant:

(a) Failed to respond to correspondence from the TDB without unreasonable delay.

The TDB's refers to the following:

(1) By letter dated 18 April 2019, the TDB wrote to the Defendant informing him of the complaint received from HMRC and requesting an initial detailed response to

the issues raised. The letter mistakenly requested a response by 29 January 2019;

(2) The 18 April letter was delivered and signed for on 20 April 2019. No response was received;

(3) By letter dated 14 May 2019, the TDB wrote to the Defendant apologising for the mistaken reference to 29 January 2019 in the previous letter and explaining that it should have referred to 10 May 2019. The TDB sought a response to HMRC's complaint by 22 May 2019;

(4) The 14 May letter was delivered and signed for on 16 May 2019;

(5) By letter dated 16 May 2019 (but not received until after 6 June 2019), the Defendant responded to the TDB;

(6) By letter dated 6 June 2019, the TDB sought confirmation from the Defendant as to whether or not he was the Ray Davis who was the subject of an ICAEW consent order dated 4 March 2019 (the "ICAEW Order"), which was enclosed;

(7) The 6 June letter was delivered and signed for on 8 June 2019. No response was received;

(8) By letter dated 28 June 2019, the TDB informed the Defendant that the Investigation Tribunal of the TDB had found a prima facie case to support the allegations made against him.

(9) There has been no further contact from the Defendant. At no stage has the Defendant confirmed whether or not he was the subject of the ICAEW Order.

DATED: September 2019

APPENDIX 2

RELEVANT RULES AND REGULATIONS

DUTIES OWED

The 'Introduction' to the Professional Rules and Practice Guidelines 2018 ("PRPG 2018") (effective from November 2018) contains the following duties:

Paragraph 1.6 states:

> *A member owes a duty to his clients … to act with reasonable care and skill. A member also owes a duty to his clients … to act with honesty, integrity, impartiality and professionalism….*

Paragraph 1.7 states:

> *A member owes a duty not to act in such a way as to bring CIOT/ATT into disrepute, or in any way which would harm the reputation or standing of CIOT/ATT… Further, a member may have duties and obligations to other regulators and professional bodies, for example, HMRC …. and should have regard to these as relevant.*

The 'Introduction' to the Professional Rules and Practice Guidelines 2011 ("PRPG 2011") (effective from 31 March 2011) at paragraph 2.1 and the Professional Conduct in Relation to Taxation ("PCRT 2015") rules (applicable from 1st May 2015) at paragraph 2.2 state the following:

> *A member must comply with the following fundamental principles:*
>
> *INTEGRITY*
>
> *To be straightforward and honest in all professional and business relationships.*

A definition is given within the PRPG 2018 at paragraph 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.*

A further definition of integrity is given at section 2.3 of the PCRT 2015 rules states

> *A member must act honestly in all his dealing with his clients, all tax authorities and other interested parties, and do nothing knowingly or carelessly that might mislead either by commission or omission.*

PROFESSIONAL BEHAVIOUR

Paragraph 2.6 of the PRPG 2011 states:

Rule 2.6.1

A member must

Take due care in his conduct

Take due care in all his professional dealings

Uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT.

Rule 2.6.2

A member must not

- *Perform his professional work, or conduct his practice or business relationships, or perform the duties of his employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT or the ATT or to the members of any part of the membership or to the tax profession.*

- *Breach the Laws of the CIOT or ATT.*

Within the PCRT 2015, under 'Professional Behaviour' (at paragraph 2.19) it is stated:

> *A member must always act in a way that will not bring him or his professional body into disrepute*

Paragraph 2.4 of the PRPG 2011 is concerned with Professional Competence and Due Care.

Paragraph 2.4.1 states:

> *A member must carry out their professional work with proper regard for the technical and professional standards expected. In particular, a member must not undertake professional work which a member is not competent to perform, whether because of lack of experience or the necessary technical or other skills, unless appropriate advice, training or assistance is obtained to ensure that the work is properly completed.*

Paragraph 2.6 of the PRPG 2011 is concerned with Professional Behaviour

Paragraph 2.6.2 states:

> *A member must*
>
> *Uphold the professional standards of the CIOT … as set out in the Laws of CIOT … ;*
>
> *Take due care in their professional conduct and professional dealings.*

Paragraph 2.6.3 states

> *A member must not:*
>
> *Perform their professional work, or conduct their practice or business relationships … negligently or incompletely to such an extent or on such a number of occasions as to be likely to bring discredit themselves, or the CIOT … to the tax profession.*

PROFESSIONAL COMPETENCE AND DUE CARE

This is defined within the PRPG 2011 at paragraph 2.1 in the following terms:

> *To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation, techniques and act diligently and in accordance with applicable technical and professional standards.*

Within the PRPG 2018, Members Obligations include compliance with the disciplinary process and orders from the TDB

Rule 2.13.2 [2018 Rules] states:

> *A member must respond to correspondence from the TDB without unreasonable delay. Without unreasonable delay will normally mean, in the absence of special circumstances, within 30 days.*

Rule 2.13.3 [2018 Rules]

> *Failure to respond to correspondence or to comply with an order from the TDB without delay will in itself constitute a disciplinary matter.*

TAX RETURNS

Within Part 2 (General Guidance), of the PCRT 2015, paragraphs 3.3 and 3.6 state

Taxpayer's responsibility

> 3.3 The taxpayer has primary responsibility to submit correct and complete returns to the best of his knowledge and belief. The return may include reasonable estimates where necessary. It follows that the final decision as to whether to disclose any issue is that of the client.

Member's Responsibility

3.6 A member must act in good faith in dealings with HMRC in accordance with the fundamental principle of integrity. In particular the member must take reasonable care and exercise appropriate professional scepticism when making statements or asserting facts on behalf of a client. Where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party. A member should take care not to be associated with the presentation of facts he knows or believes to be incorrect or misleading nor to assert tax positions in a tax return which he considers have no sustainable basis.

APPENDIX 3

The test for dishonesty as set out in Ivey vs Genting [2017] UKSC 67, paragraph 74:

> *When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*