

THE DISCIPLINARY TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD

TDB/2018/18
TDB/2019/36 & TDB/2020/09

TAXATION DISCIPLINARY BOARD
(TDB)

v

Mr Peter Findlay

(Membership Number 139499, COIT)

DECISION
(20/11/2020)

INTRODUCTION

1. The Disciplinary Tribunal of the Taxation Disciplinary Board sat remotely on Friday 20th November 2020. The hearing was chaired by Mr Peter Cadman, solicitor who was sitting with Ms Manuela Grayson (lay member) and Mr David Hards (CIOT member). Mr Nigel Bremner, Clerk to the Disciplinary Tribunal, and Ms Fiona Herson, the TDB's executive assistant, were also present.
2. Ms Sasha Quefferus, counsel, represented the TDB. Mr Findlay was not present nor represented.

SERVICE

3. Ms Quefferus invited the Tribunal to conclude that there had been valid service of notice of the hearing on Mr Findlay.
4. The Panel noted the letter sent by Mr Bremner to Mr Findlay dated 5TH October 2020 enclosing all the material required under Regulation 14 of the Taxation Disciplinary

Scheme. This letter had been sent recorded delivery and had been signed "P Findlay" on 6th October 2020 at 09.22.

5. The Tribunal was satisfied that the notice of this hearing had been properly served on Mr Findlay.

PROCEEDING IN THE ABSENCE OF MR. FINDLAY

6. Ms Queffurus on behalf of the TDB applied for the matter to proceed in the absence of Mr Findlay. She drew the Tribunal's attention to other correspondence and emails to Mr. Findlay dated November 4th, 13th and 17th without any response at all from Mr. Findlay. She also reminded the Tribunal that Mr Findlay had also failed to attend a hearing on 19th August 2020.
7. The Tribunal bore in mind the right of Mr Findlay to participate in these proceedings and considered the application to proceed with the utmost care and caution. It bore in mind the reasoning set out in the case of GMC v Adeogba [2016]. It had to balance the rights of a member to participate with the public interest in the fair, economical, expeditious and efficient disposal of allegations made against members of a profession. In the circumstances of this case the Tribunal bore in mind the limited engagement of Mr. Findlay in the process. The Tribunal considered that there was no reason to believe that an adjournment would secure Mr Findlay's attendance. In exercising its powers the Tribunal decided that the public interest in proceeding outweighed Mr Findlay's right to participate. The Tribunal ruled that the case should proceed in his absence.

CHARGES

8. Mr Findlay faced the following charges.

The charges set out below refer to the following rules of the Professional Rules and Practice Guidelines 2011 of the Chartered Institute of Taxation ("CIOT") and the Association of Taxation Technicians (the "ATT"), in force from 31 March 2011 until 8 November 2018 (the "**PRPG 2011**");

- (1) 2.1 and 2.6.2 (Professional behaviour)
- (2) 2.2.1 (Honesty)
- (3) 2.2.2 (Illegal activity)
- (4) 2.2.4 (Taking care of client money)
- (5) 2.6.1 (Upholding professional standards)
- (6) 2.6.2 (Discredit)
- (7) 7.7.8 (Withdrawal of client money)
- (8) 7.7.9 (Records of client money)

and the following rules of the Professional Rules and Practice Guidelines 2018 of the CIOT and the ATT in force from 9 November 2018 (the “**PRPG 2018**”):

- (1) 2.1 and 2.6.3 (Professional behaviour)
- (2) 2.2.1 (Honesty)
- (3) 2.2.2 (Illegal activity)
- (4) 2.2.3 (Taking care of client money)
- (5) 2.6.2 (Upholding professional standards)
- (6) 2.6.3 (Discredit)
- (7) 4.4 (Ceasing to act, handover)
- (8) 7.6.10 (Withdrawal of client money)
- (9) 7.6.11 (Records of client money)
- (10) 10.1.3 (Letter of disengagement)
- (11) 10.1.4 (Ceasing to act)
- (12) 10.1.5 (Ceasing to act, handover)

1. Charge 1 (The ‘Handling Client Money Charge’, relating to Dr Tearle)

1.1. In breach of Rules 2.2.4, 7.7.8 and / or 7.7.9 PRPG 2011, and / or Rules 2.2.3, 7.6.10 and / or 7.6.11 PRPG 2018, Mr Findlay acted without the required level of professional behaviour in that:

- (a) Mr Findlay failed to ensure his client’s money was properly accounted for and / or maintained separately; and / or

- (b) Mr Findlay withdrew money from a client account without proper authorisation by the client; and / or
- (c) Mr Findlay failed to maintain records to show clearly the money which was received on account of his clients and details of any other money dealt with by him through the client account.

1.2. The TDB's case is as follows:

- (a) Dr Tearle was Mr Findlay's client until October 2018 when she appointed a new tax advisor.
- (b) On 11 January 2018 HMRC wrote to Dr Tearle confirming they would be paying her a tax refund of £5,061.83. She asked Mr Findlay where this money was on 18 November 2018. Mr Findlay said that he would investigate.
- (c) From November 2018 to January 2020 Dr Tearle sent numerous emails chasing Mr Findlay about the refund. Mr Findlay responded on several occasions saying that he was busy but would look into it.
- (d) On 3 December 2019 Mr Findlay wrote to Dr Tearle confirming the £5,061.83 had been paid by HMRC into his account on 11 January 2018, but that he cannot trace where that money has now gone. He blamed a former employee for the error. He offered to repay the money over a period of 12 months.
- (e) Dr Tearle made a complaint to the TDB on 4 February 2020.
- (f) On 23 June 2020 Dr Tearle confirmed that she had received repayment in full from Mr Findlay.
- (g) On 10 July 2020 Mr Findlay responded to the TDB saying that he had repaid the money to Dr Tearle. He cannot say where the money went or to whom. He denies taking any tax refund money intentionally. He accepted having acted unprofessionally. He again blamed an employee who has now left his employment.

2. Charge 2 (The 'Integrity and Professional Behaviour Charge', relating to Dr Tearle)

2.1. In breach of Rules 2.2.1, 2.2.2, 2.6.1, and / or 2.6.2 PRPG 2011, and / or Rules 2.2.1, 2.2.2, 2.6.2, and / or 2.6.3 PRPG 2018, Mr Findlay acted without the required level of integrity and / or professional behaviour in that:

- (a) Mr Findlay failed to act in an honest manner in his professional work; and / or
- (b) Mr Findlay engaged in, or was a party to, illegal activity, either directly or indirectly; and / or
- (c) Mr Findlay acted in a way that was likely to bring discredit to himself the profession and / or the CIOT / ATT.

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

3. Charge 3 (The 'Handling Client Money Charge', relating to Dr Burger)

3.1. In breach of Rules 2.2.4, 7.7.8 and / or 7.7.9 PRPG 2011, and / or Rules 2.2.3, 7.6.10 and / or 7.6.11 PRPG 2018, Mr Findlay acted without the required level of professional behaviour in that:

- (a) Mr Findlay failed to ensure his client's money was properly accounted for and / or maintained separately; and / or
- (b) Mr Findlay withdrew money from a client account without proper authorisation by the client; and / or
- (c) Mr Findlay failed to maintain records to show clearly the money which was received on account of his clients and details of any other money dealt with by him through the client account.

3.2. The TDB's case is as follows:

- (a) Dr Burger and her husband Mr Nieuwenhuis were Mr Findlay's clients from May 2013 until Dr Burger terminated the contract on 13 August 2019. There was no formal engagement letter, but terms were agreed and a handover from the previous accountants took place in August 2013.
- (b) In November 2018 HMRC notified Dr Burger that they would be paying her a tax refund of £13,192.19.
- (c) In March 2019, having yet to receive the refund, Dr Burger contacted HMRC who confirmed that the refund had been paid to Mr Findlay in November 2018. HMRC also confirmed a number of other refunds had been made to Mr Findlay, which Dr Burger and her husband never received.
- (d) On 13 August 2019 Dr Burger wrote to Mr Findlay alleging that Mr Findlay had wrongfully retained their tax refunds and requesting he pay them forthwith. They referred to Mr Findlay having agreed to repay them by 31 July 2019, but that this hadn't happened. They gave an ultimatum to return the money within 14 days or they would report Mr Findlay to the CIOT / ATT, police and HMRC.

- (e) On 22 August 2019 Mr Findlay responded to the letter in which he acknowledged the money had not been paid to the clients as it ought to have been and that it was due to them still. He apologised and noted he would need some time to repay the money and proposed £500 a month. He acknowledges that he has been avoiding responding to her previous correspondence out of 'shame'.
- (f) Dr Burger engaged the services of a solicitor's firm, Pardoes, to assist her in recouping the money owed to her and her husband. On 19 September 2019 Pardoes wrote a pre-action letter to Mr Findlay outlining various tax refunds for Dr Burger and Mr Nieuwenhuis which HMRC had confirmed it paid to Mr Findlay (in total, £25,978.88; £29,477.18 with interest):
- a. 4 February 2015, a tax refund for Mr Nieuwenhuis of £2,031.95
 - b. 4 February 2016, a tax refund for Mr Nieuwenhuis of £2,797.80
 - c. 7 February 2017, a tax refund for Mr Nieuwenhuis of £2,518.00
 - d. 7 February 2018, a tax refund for Mr Nieuwenhuis of £2,598.00
 - e. 27 October 2018, a tax refund for Dr Burger of £405.44
 - f. 15 November 2018, a tax refund for Dr Burger of £13,192.19
 - g. 5 December 2018, a tax refund for Dr Burger of £2,435.50
- (g) On 10 October 2019 Mr Findlay wrote a letter to Pardoes in which he accepted liability. He apologised and promised to repay the sums, noting he would need some time and a payment plan. He says that he never intended to 'take' the money but accepts it has gone. He refers to the possibility that he had 'some sort of breakdown' at the time that the money was removed / used. He encloses a cheque for £500.
- (h) On 21 October 2018 Pardoes wrote to Mr Findlay, returning the cheque for £500 he had made out to Dr Burgers company account, asking that all cheques be made to her personal one. They acknowledge a payment of £500 made to Dr Burger on 10 September 2019.
- (i) On 28 November 2019 Dr Burger made a complaint to the TDB alleging misconduct by Mr Findlay.
- (j) By 20 September 2020, Mr Findlay had not repaid the outstanding amounts in full.

4. Charge 4 (The ‘Integrity and Professional Behaviour Charge’, relating to Dr Burger)

4.1. In breach of Rules 2.2.1, 2.2.2, 2.6.1, and / or 2.6.2 PRPG 2011, and / or Rules 2.2.1, 2.2.2, 2.6.2, and / or 2.6.3 PRPG 2018, Mr Findlay acted without the required level of integrity and / or professional behaviour in that:

- (a) Mr Findlay failed to act in an honest manner in his professional work; and / or
- (b) Mr Findlay engaged in, or was a party to, illegal activity, either directly or indirectly; and / or
- (c) Mr Findlay acted in a way that was likely to bring discredit to himself the profession and / or the CIOT / ATT.

4.2. The TDB relies on the matters stated in respect of Charge 3 above.

5. Charge 5 (The ‘Handover Charge’, relating to Dr Burger)

5.1. In breach of Rules 2.1, 2.6.3, 4.4, 10.1.4 and / or 10.1.5 PRPG 2018, Mr Findlay acted without the required level of professional behaviour in that:

- (a) Mr Findlay failed to provide a letter of disengagement which the Rules strongly advise a member should provide when ceasing to act for a client; and / or
- (b) Mr Findlay failed to provide necessary assistance and / or documentation in order to facilitate a handover from himself to Dr Burger when she was trying to engage the services of a new tax advisor.

5.2. The TDB’s case is as follows:

- (a) Miss Sonia Burger and her husband Mr Ulrich Nieuwenhuis were Mr Findlay’s clients from May 2013 until Dr Burger terminated the contract on 13 August 2019.

(b) On 23 June 2020 Dr Burger raised with the TDB that Mr Findlay had failed to handover documents to her new advisors.

END OF CHARGES

9. Ms Queffurus applied firstly to amend Charge 5 to add further particulars and secondly to add a Charge 6 alleging failure to reply to correspondence. During the hearing itself she withdrew the second application. The Tribunal refused the first application noting that Mr Findlay would have only received notification of this application the day before the hearing. The Tribunal did not consider it fair to add this charge at this late stage in Mr Findlay's absence.
10. This Tribunal had already heard charges against Mr Findlay (TDB/2018/18) on August 19th 2020. Miss Queffurus submitted that this Tribunal was not precluded from hearing these further charges. The Tribunal decided that there would be no unfairness to Mr Findlay in this Tribunal hearing these charges. The earlier hearing was about Mr Findlay's regulatory obligations and Mr Findlay had not participated so that the Tribunal had not come to any view on his credibility.

THE HEARING

11. Ms Quefferus drew the Tribunal's attention to relevant parts of the hearing bundle and in particular with regard to Dr T (charges 1 and 2):

11.1 With regards to his client Dr T, he had received a tax rebate in the sum of £5061.83. Dr T was made aware of this when she received a letter from HMRC dated 11/1/2018 and she emailed Mr Findlay on 18/1/2018. At that stage Mr Findlay said he would look into it and get back to Dr T. Dr T sent further emails in 2019 on January 24th , March 24th , May 31st , June 22nd , July 23rd , October 25th , November 6th and 13th , December 2nd and 6th and January 9th 2020. Until December 3rd 2019 Mr. Findlay had sent a few emails in reply only saying that he was busy but would look into it.

11.2 In his letter to Dr T of December 3rd 2019 Mr Findlay stated:

“I have now found a record that HMRC paid £5016.83 into my bank account on 11th January 2018.....I have made an online search of the bank account and can indeed confirm receipt of the amount.

However, that is as far as I can go as I did not operate the client account at this time ---one of my assistants did and she is no longer with me. I can see a number of payments out of the account ,all by cheque, but cannot trace them to particular clients because I have not been able to find the cheque book stubs.....

I can confirm, and I hope you will believe me, that I have not removed the money from the accountthe only thing I can do is take responsibility and to make full payments to you. However, I am not in a position to do this at once.”

11.3 Payments were made by Mr Findlay to Dr T by instalments with the final payment being made in February/March 2020 some two years after Mr Findlay had received payment from HMRC.

12. Ms Queffurus drew the Tribunal's attention to the relevant parts of hearing bundle with regard to Dr B:

12.1 Dr B and her husband were clients of Mr Findlay from May 2013 until Dr B terminated the contract on 13th August 2019.

12.2 In November 2018 HMRC had notified Dr B that they would be paying her a tax refund of £13,192.19. In March 2019, having not received the refund Dr B contacted HMRC and was informed that the refund had in fact been made to Mr Findlay. HMRC also confirmed that a number of other tax refunds had been made to Mr Findlay for Dr B and her husband. Neither Dr B nor her husband was aware of these payments and Mr Findlay had not forwarded the refunds to them.

12.3 The moneys paid by HMRC to Mr Findlay were:

February 4th 2015 £2031.95 for Dr B's husband
February 4th 2016 £2797.80 for Dr B's husband
February 7th 2017 £2518.00 for Dr B's husband
February 7th 2018 £2598.00 for Dr B's husband
October 27th 2018 £405.44 for Dr B
November 15th 2018 £13,192.19 for Dr B
December 5th 2018 £2435.50 for Dr B

The total received by Mr Findlay for Dr B and her husband was £24,978.88 tax refund which, with interest, came to a sum of £29,477.18.

12.4 Dr B demanded immediate repayment and in her complaint Dr B referred to an agreement by Mr Findlay to repay in full by July 31st 2019. That payment was not made. Dr B wrote again to Mr Findlay on August 13th and he replied on August 22nd accepting that the money was owed and asking for time to pay at £500 per month.

12.5 Dr B instructed solicitors and they wrote a letter before action to Mr Findlay on September 19th demanding payment of £29,477.18. Mr Findlay replied on October 10th 2019 accepting liability , apologising and asking for time to pay saying he never intended to “take“ the money while accepting that it had gone. He could “only think that he was going through some sort of breakdown“.

12.6 Mr Findlay has made some payments but not all.

12.7 New accountants for Dr B wrote to Mr Findlay on October 8th 2019 for handover documents. In answer to the TDB, Mr Findlay denied hearing from the new accountants. However, even after the letter sent by Dr B's solicitors and a response to that letter by Mr Findlay, no handover documents were sent. Dr B on November 18th confirmed the handover documents still had not been received.

13. The Tribunal reminded itself that the Charges had to be determined on the balance of probabilities and that the burden of proof rested with the TDB. The Tribunal noted that Mr Findlay was a man of good character.

14. The Tribunal made the following findings of fact:

14.1. Mr Findlay did receive a tax refund for Dr T in the sum of £5016.83 on January 11th 2018.

14.2 That sum was no longer held by Mr Findlay in his client account by December 3rd 2019 (at the very latest). On that date Mr Findlay was not able to repay Dr T and could only offer payment at £500 per month.

14.3 Dr T has now been repaid in full but only some two years after Mr Findlay received her tax rebate from HMRC.

14.4 Mr Findlay received seven separate tax rebates for Dr B and her husband between February 2015 and November 2018 in the total sum of £29,309.58 (including interest).

14.5 Those sums were no longer held by Mr Findlay by October 10th 2020 (at the very latest) when he accepted in his letter that the “money had gone“.

15. The Tribunal first considered Charges 1 and 3. With regard both to Dr T and Dr B the Tribunal found these charges proved. Clients’ funds had not been properly accounted for and had been withdrawn without proper authorisation. Mr Findlay himself accepted that for Dr B “the money has gone“. He has produced no accounting records for the withdrawals. His actions are in breach of Rules 2.2.4, 7.7.8 and 7.7.9 of PRPG 2011 and Rules 2.2.3, 7.6.10 and 7.6.11 of PRPG 2018.

16. With regard to Charges 2 and 4, the Tribunal noted the explanations provided by Mr Findlay.

16.1 With regard to Dr T, Mr Findlay in his letter of December 3rd 2019 made reference to the purported actions of an unnamed member of staff and missing cheque stubs for the period between January 30th 2017 and April 16th 2018. The Tribunal rejected this vague assertion to the purported actions of an assistant. Mr Findlay has not provided to either client or to the TDB any further information to support this. Further, in his explanation given to Dr B on August 22nd 2019, some months after Dr T had already raised her concerns with him, Mr Findlay makes no reference at all to the purported actions of an assistant or missing cheque stubs. The Tribunal rejected this explanation.

16.2 With regard to Dr B, in August 2019 Mr Findlay suggested that he may have had some sort of breakdown. This is not referred to in the limited correspondence he has had with TDB nor is this referred to within his reply to Dr T in December 2019. In addition he informed the TDB that he had been admitted to hospital on Good Friday 2017 after extreme illness. In the absence of any evidence before this Tribunal to support any alleged health conditions,

the Tribunal did not attach any weight to these references to Mr Findlay's health.

16.3 The Tribunal noted that with regard to Dr T there was one payment of £5,016.83 received by Mr Findlay from HMRC in January 2018. Not only did Mr Findlay not pay that money to his client but also it appears that it was no longer in his client account by December 2019. It took Mr Findlay more than two years to pay Dr T. With regard to Dr B, the first payment received by Mr Findlay from HMRC was for her husband in February 2015. Mr Findlay did not inform his clients of the refund and was unable to pay it on demand from Dr B or her solicitors. The total amount of seven tax refunds from February 2015 to December 2018 of £29,477.18 has, even at the time of this hearing in November 2020, not been paid over to his clients in full.

16.4 The Tribunal bore in mind that Mr Findlay was a professional man and of good character. The Panel bore in mind the test set out in Ivey v Genting (2017) UKSC 67. In all the circumstance and in light of its findings of fact, the Tribunal concluded that Mr Findlay was aware that the funds in his client account should have been paid promptly to his clients. Further, because of the substantial amounts involved, the fact that there were eight separate tax refunds and the period of time of those refunds being some three and a half years, the Tribunal concluded that Mr Findlay knew what he was doing and that he knew that what he was doing was dishonest.

16.5 The Tribunal found Charges 2(a); 2(c) (in relation to Dr T); and 4(a) and 4(c) proved in that Mr. Findlay failed to act in an honest manner in his professional work and (c) acted in a way likely to bring discredit to himself and the profession contrary to Rules 2.2.1, 2.6.1 and 2.6.2 of PRPG 2011 and 2.2.1, 2.6.2.and 2.6.3 of PRPG 2018.

16.6 However, the Tribunal did not find sub paragraphs 2(b) and 4(b) proved. The Tribunal took the view this would only be a relevant matter for consideration if the Tribunal had reached a finding of fact that an "assistant" might have been responsible for the withdrawal of funds. The Tribunal rejected this assertion.

17 With regard to Charge 5, the Tribunal took into account that new accountants for Dr B had written to Mr Findlay on October 8th 2019 asking for professional clearance and for the provision of information and documentation to assist the handover. Mr Findlay was professionally obliged to take those actions but he did not do so and, as at November 18th 2020, Dr B provided confirmation that Mr Findlay still had not done so. The Tribunal found this Charge proved.

SANCTION

18 In addition to the findings made today, the Tribunal had also to consider sanction on the charges adjourned from August 19th 2020. Miss Queffurus informed the Tribunal that its decision had been forwarded to Mr Findlay but no further information had been sent to the TDB by him. Further, the matters outstanding on August 19th 2020 remained outstanding.

19 The Tribunal reminded itself of the key principles in disciplining a member namely protecting the public, upholding the proper standards of conduct in the profession and maintaining the reputation of the profession.

20 The Tribunal took into account the TDB Indicative Sanctions Guidance. The Panel bore in mind that Mr Findlay had no prior disciplinary findings recorded against him.

21 The Tribunal started its consideration with the minimum sanction proportionate to the level of misconduct found proved. The Tribunal in particular had note of the guidance on client money and ethical conduct which are of particular relevance to the Tribunal's adverse findings on Charges 2 and 4.

22 The Tribunal concluded that no lesser sanction than expulsion was appropriate in this case. There was dishonest conduct over a period of years with tax refunds going back to 2015 still not paid to his client. Indeed Dr B had not been informed by Mr Findlay even of the existence of any of the tax rebates.

23 The Tribunal orders that Mr Findlay is expelled from membership of CIOT and ATT.

COSTS

- 24 Miss Queffurus made an application for costs of TDB in the sum of £7,722.60 and the Tribunal was provided with a breakdown of those costs.
- 25 The Tribunal took account of the TDB Guidance on Awarding Costs. The Tribunal noted that Mr Findlay had not provided the Tribunal with any evidence as to his means. It saw no exceptional circumstances so as to conclude that Mr Findlay should not pay the costs.
- 26 The Tribunal orders that Mr Findlay pay costs in the sum of £7,722.60 within 28 days (or any other period agreed between him and the TDB).

PUBLICITY

27. The Tribunal order that this decision be publicised in the ordinary way.

PETER CADMAN

(Chairman)

20/11/2020