

**TAXATION DISCIPLINARY BOARD**  
**(TDB)**

**v**

**MR DAVID PARKER**  
**(Membership Number COIT 138184)**

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**DECISION**  
**(Hearing 13<sup>th</sup> January 2021)**

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**INTRODUCTION:**

1. The Disciplinary Tribunal of the Taxation Disciplinary Board sat remotely on Wednesday 13 January 2021. The hearing was chaired by Mr Peter Cadman, solicitor, who was sitting with Mr. Andrew Gell (lay member) and Ms Teresa Payne (ATT member).
2. Ms Kelly Stricklin-Coutinho, counsel, represented the TDB. Mr Parker was present and was represented by Mr M. Manu of ESN Solicitors. Mr Nigel Bremner was present as clerk to the Tribunal.

**THE CHARGES**

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## SCHEDULE OF CHARGES

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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 and 3.6.
  
- (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.

### **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) The Defendant prepared VAT returns for his client, 'A Ltd'. The VAT returns were incorrect because the Defendant understated his client's turnover and failed to properly account for VAT on the basis of documents available to him.
- (3) The Defendant calculated VAT at zero-rate on all sales during the relevant period on the basis that all supplies took place outside the UK. However, VAT returns during this period had included input tax claimed on the cost of hotels in the UK, and documents relating to UK tour dates were included in the prime records.
- (4) The result of the Defendant's actions was that HMRC issued the Defendant's client with VAT assessments in excess of £365,000, and penalties, which concerned deliberate behaviour with a prompted disclosure, of £128,000.
- (5) By understating turnover for his client and failing to properly account for VAT on the basis of the documents available to him, the Defendant prepared incorrect tax returns, in breach of rules PCRT 2015 2.2, 2.3 and 3.6.

### **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, 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;
- (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 unbecoming, 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 Charge 1 above.

## **THE HEARING**

4. Ms Striicklin-Coutinho drew the Tribunal's attention to relevant parts of the hearing bundle.
5. HMRC reported Mr Parker to TDB under s.20(3) of the Commissioners for Revenue and Customs Act 2005 on 20<sup>th</sup> September 2019. HMRC in later correspondence dated 7<sup>th</sup> February 2020 confirmed that they do not investigate Tax Agent misconduct but merely

make a report where they believe there is evidence that a member may have engaged in misconduct.

6. Mr Parker had been acting for A Ltd since 2012. His firm had lodged VAT returns on behalf A Ltd from that date.
7. HMRC conducted investigations into A Ltd In due course HMRC issued a VAT assessment for underpayment of VAT in excess of £365k with penalties of £128k for deliberate conduct covering the period from VAT period 4/14 to 6/18. The penalty was calculated at 35% based on a deliberate behaviour rate. This arose partly from deliberate understatement of A Ltd's turnover and partly not accounting properly for VAT. In particular VAT was calculated as zero rated on the basis that all supplies took place outside the UK. HMRC had ascertained that there were UK based concerts by the client band.
8. The TDB asserted, and Mr Parker did not dispute, that the VAT returns were incorrect.
9. A major factual dispute between TDB and Mr Parker was whether Mr Parker had lodged VAT returns knowing the returns were false or whether they were completed accurately on the basis of information provided to him by the client.
10. Mr Parker asserted that he was no longer in possession of his case papers as all had been sent to HMRC during the HMRC investigation into his client and that they had never been returned to him. In answer to a query raised by TDB on November 6<sup>th</sup> 2020 HMRC stated that they did not hold any papers that needed to be returned to Mr Parker and that they had not received any such request from him.
11. In reply to a request from TDB seeking original documents, Mr Parker's solicitors by letter of 26<sup>th</sup> October 2020 enclosed "documents that Mr Parker is able to obtain to date'. The TDB proceeded on the basis that these documents were in Mr Parker's possession at the time the VAT returns were lodged. An opening note was prepared by Ms Stricklin-Coutinho dated 15<sup>th</sup> December 2020 for the hearing on 17<sup>th</sup> December 2020 on the basis that the documents were in Mr Parker's possession at the time of the VAT returns. Mr Parker lodged a witness statement dated 11<sup>th</sup> January 2021. He did not within that statement assert that the TDB case was inaccurately presented. It was only

in evidence before the Tribunal that he asserted that those documents came into his possession during the investigation rather than at the time of the VAT returns.

12. Those documents, if with Mr Parker at the time of the VAT returns, were strong evidence in support of the main allegations brought by TDB
13. Mr. Parker asserted that his client had emailed documentation to his firm and from this information a junior member of staff entered figures into the VAT returns which were accurate on the basis of the information received.
14. Mr Parker accepted that he had not sent a letter of engagement detailing amongst other things his responsibilities and those of his client. He conceded that he had not written to his clients explaining what was required from them for the VAT returns. He stated that when the VAT returns were sent to the clients for approval he did not stress their obligations to check the returns for accuracy.
15. Further, when HMRC started its investigations, he kept no notes of his meetings with HMRC even though it was an investigation into VAT returns his firm had lodged that were allegedly inaccurate or indeed false. Even when he realised that this was a “big problem” he did not make any notes of his meetings with HMRC . Further he seems not to have asked his clients for an explanation as to why, according to his evidence, they had provided inaccurate or false information to him resulting in what were false VAT returns. Mr Parker also confirmed that he had not considered whether any actions were required under AML legislation. His specific evidence was that they must have withheld from him all invoices showing UK based work.
16. Mr Parker did not suggest that his lack of record keeping was a fault only for this client. He asserted that the problems he had with computers and screens meant that he kept no electronic file records. He was unable to explain why he did not make hand-written records.

## **DECISION**

17. 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 Parker was a man of good character.

18. The Tribunal first considered whether Mr Parker knew that the VAT returns were not correct and indeed were knowingly false at the time the returns were lodged. This was a fundamental plank of the TDB case. The Tribunal accepted that Mr Parker had no apparent motive for deliberately lodging false VAT returns for this client.
19. The Tribunal and TDB might have been helped if Mr Parker's file papers had been available. While it was surprised that Mr Parker had not been more vigorous in trying to locate the missing papers and indeed his efforts seemed at best half-hearted, it was not persuaded on the balance of probabilities that Mr Parker had the papers or knew where they were.
20. The Tribunal considered all of the material presented to it. While the Tribunal had concerns about the material before it and concerns about some of Mr Parker's evidence, it was not persuaded that TDB had discharged the burden of proof to establish that Mr Parker knew or suspected that the VAT returns were wrong.
21. As a result the Tribunal found Charges 1 (a), (b) and (c) not proved.
22. On the same basis the Tribunal found Charges 2 (a) and (b) not proved
23. The Tribunal, however, concluded that Charge 2(c) and (d) were proved. When addressing the Tribunal on the specific admitted failures to keep any records at all of the HMRC investigation, having no engagement letter and no written warning to his client of the effect of HMRC investigation, Mr Manu accepted the failures but asked the Tribunal to bear in mind Mr Parker's age and his methods. He conceded that, as a professional, Mr Parker had not kept records as he should have. The Tribunal took the view that these were serious matters and failings. While making allowances for medical issues, to which the Tribunal's attention had been drawn, even if Mr Parker had difficulties in "screen" work there was no excuse for not providing letter of engagement, not making and keeping hand written file notes on matters as serious as this VAT inspection and of meetings with his client when asking them how the problems arose. This was especially relevant when Mr Parker's view in his evidence was that the client had deliberately lodged the foreign invoices but had deliberately withheld the UK invoices presumably to lower VAT obligations.

24. The Tribunal also found Charge 3 proved. The abject failings were more than enough to establish this charge.

## **SANCTION**

25. 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.

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

27. The Tribunal started its consideration with the minimum sanction proportionate to the level of misconduct found proved for Charges (c) and (d) and Charge 3.

28. The Tribunal took into account that Mr Parker had no prior disciplinary sanctions and that this case arose from one client. However, his failures were of a fundamental nature of basic obligations of a professional and, although the case arose from one client, his evidence was that these failures and breaches here were his normal practice rather than exceptionally for this client. The proportionate and appropriate sanction was one of censure.

29. Miss Stricklin-Coutinho made an application for costs of TDB in the sum of £8,295.94 and the Tribunal was provided with a breakdown of those costs.

30. The Tribunal took account of the TDB Guidance on Awarding Costs.

31. Mr Manu suggested that the Tribunal should not make a full costs order as some of the allegations had not been proved. He made no submissions on the quantum of the costs.

32. The Tribunal noted the issues that had arisen about the whereabouts of Mr Parker's case papers. The Tribunal accepted that the papers had been lodged with HMRC but noted that HMRC had specifically stated that they held none of his papers. The Tribunal was not impressed by the very lukewarm efforts taken by Mr Parker to locate the case papers. Further, his solicitor's letter producing documents to TDB did not make it clear that they were not part of the case papers with Mr Parker at the time of the VAT returns.

Even though this formed part of the TDB case as stated in its case summary dated 15<sup>th</sup> December 2020, it was not corrected in Mr Parker's witness statement of 11<sup>th</sup> January 2021. The first positive assertion that those documents only came into Mr Parker's possession subsequent to the production of the VAT returns was in Mr Parker's evidence to this Tribunal.

33. In these circumstances the Tribunal felt that Mr Parker had brought the costs on himself and was not prepared to make a reduction. The Tribunal ordered Mr Parker to pay full costs of £8,295.94

### **PUBLICITY**

34. The TDB applied for an order that the decision of TDB be publicised. Mr Manu submitted that there should be no publication as the case was about only one client and there had been no previous complaints.
35. The Tribunal's view was that the starting point is that there was a public interest in all Tribunal decisions being published. There was a public interest in the public being reassured that professional bodies regulate their member to protect the public and uphold standards There was nothing in the representations made to justify any privacy for Mr Parker. The Tribunal order that this decision be publicised in the ordinary way.

Peter Cadman

Chair

17 January 2021