

**THE DISCIPLINARY TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD**

TDB/2018/22

**TAXATION DISCIPLINARY BOARD
(TDB)**

v

**MR RICHARD BELL
(Membership Number ATT 142152)**

**DECISION
(13/01/21)**

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 Sacha Quefferus, counsel, represented the TDB. Mr Nigel Bremner was the clerk to the Tribunal. Mr Bell was not present nor represented.
3. Mr Bell faced the following charges.

SCHEDULE OF 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) 2.6.3 (*Courtesy and consideration*)
- (2) 2.8.1 (*Provision of information*)
- (3) 2.11 (*Obligation to comply with Anti Money Laundering legislation*)

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) 2.6.4 (Courtesy and consideration)
- (2) 2.10.2 (Obligation to comply with Anti Money Laundering legislation)
- (3) 2.12.1 (Provision of information)
- (4) 2.13.2 & 2.13.3 (Compliance with disciplinary process / orders from TDB)

and the following regulation of the Money Laundering Regulations 2007: Registration, Monitoring and Compliance Scheme of the CIOT, in force from 15 December 2007 until 11 November 2018 (the "MLR 2007"):

1. Charge 1 (the "Renewal Registration Charge 2018 / 2019")

1.1. In breach of his obligations under Regulation 5.3(a) MLR 2007, Rules 2.8.1 and / or 2.11 PRPG 2011, and / or Rules 2.10.1, 2.10.2 and / or 2.12.1 PRPG 2018, Mr Bell:

(a) Failed to provide a copy of his DBS (criminal history check) certificate along with his application for AML registration for the year 2018 / 2019.

1.2. It is alleged that:

(a) Mr Bell was required by the ATT to provide a copy of his DBS certificate alongside any renewal registration form for AML supervision for 2018 / 2019 by 31 May 2018. He did provide his registration form on 5 July 2018 but did not provide a DBS certificate;

(b) Mr Bell's failure to provide a copy of his DBS certificate meant that his application for renewal of his registration could not proceed and so was unregistered for the purposes of anti-money laundering legislation;

(c) Mr Bell was contacted by the ATT on numerous occasions reminding him of his obligation to provide a DBS certificate and reminding him that the renewal of his registration could not proceed without this document; and

(d) That by 10 July 2020 Mr Bell had still failed to provide his DBS certificate to the ATT.

2. Charge 2 (the "Correspondence Charge")

2.1. In breach of his obligations under Rules 2.12.1, 2.13.2 and / or 2.13.3 PRPG 2018, Mr Bell failed to respond to correspondence from the ATT and / or the TBD without unreasonable delay.

2.2. It is alleged that:

- (a) *On 4 September 2018 the ATT advised Mr Bell by email that he had failed to provide them with a copy of his DBS certificate and that until one had been provided his application for renewal of his registration for AML supervision could not proceed;*
- (b) *Mr Bell did not respond until 13 March 2019, when he indicated to the ATT that he was in the process of obtaining a DBS certificate. He further wrote to the ATT on 26 March 2019 outlining the difficulties he was having in obtaining the relevant documentation he needed in order to apply for the DBS certificate. No communication has been received from Mr Bell to the ATT since;*
- (c) *It is alleged that failing to respond to the ATT's correspondence for over six months constitutes an unreasonable delay, in breach of Mr Bell's obligations under Rule 2.12.1;*
- (d) *On 19 November 2018 the TDB sent Mr Bell a letter communicating that the ATT had notified them of his failure to provide them with a copy of his DBS certificate and asked that he respond 'within 14 days' or the TDB would have to commence a disciplinary investigation;*
- (e) *On 23 April 2019 the TDB notified Mr Bell that he was being referred to the TDB Investigation Committee. The TDB had not received any response to their letter by 7 November 2019 (date of the TDB Investigation Committee meeting); and*
- (f) *It is alleged that failing to respond to the TDB's correspondence for over six months constitutes unreasonable delay, in breach of Mr Bell's obligations under Rule 2.13.2.*

3. Charge 3 (the "Professional Behaviour Charge")

3.1. In breach of his obligations under Rule 2.6.3 PRPG 2011 and / or Rule 2.6.4 PRPG 2018 Mr Bell failed to comply with the fundamental principle of professional behaviour, in that he has demonstrated a lack of courtesy and consideration by failing to comply with important communications from the ATT and / or the TDB.

3.2. The failures to respond to communications as set out in Charge 2 are relied upon.

SERVICE OF PROCEEDINGS:

- 4. This case had initially been listed for hearing on 19 August 2020. On that occasion Mr Bell had also not attended. The Tribunal was satisfied that proper service had been effected but was not prepared to proceed in Mr Bell's absence.

5. The case was relisted for hearing on Thursday 17 December 2020. The Tribunal did not proceed as Mr Bell had only received seven days notice of the actual hearing date and he had said that there were matters he wished to raise. The Tribunal therefore adjourned the proceedings to today's date.
6. Mr Bell was notified of the hearing today by email and the Tribunal's adjournment decision of 17 December was also sent to him. It was clear from the correspondence that Mr Bell was aware of today's listing as he had also been aware of the two earlier hearing dates.
7. The Tribunal noted that this was an adjourned hearing and not a first hearing. There appear to be no specific Regulations as to service of notice of adjourned hearing such as this. While Regulations as to first hearings could be persuasive, the Tribunal considered they were not binding.
8. The Tribunal considered that the period of notice had to be fair in all the circumstances.

PROCEEDING IN THE ABSENCE OF MR BELL:

9. Ms Queffurus made an application that the case should proceed in the absence of Mr Bell. She drew the Tribunal's attention to the history of the case and the recent correspondence with Mr Bell.
10. The Tribunal bore in mind the right of Mr Bell 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 that the case arises from the alleged failures of Mr Bell from May 2018. The case already had been adjourned twice with Mr Bell not attending on either occasion. He has asserted that he had medical appointments this week but provided no further details at all. He also asserted that he was very busy with work commitments.
11. The Tribunal considered that there was no reason to believe that an adjournment would secure Mr Bell's attendance. This was again a virtual hearing in which he could participate. The Tribunal had no information before it as to the nature of the asserted medical appointments and Mr Bell had not suggested that they clashed with the date or time of this hearing. He had not produced any written information about these appointments. The Tribunal considered that, whatever work commitments Mr Bell might have, they should not have precluded him from participating in these proceedings.
12. In exercising its powers the Tribunal decided that the public interest in proceeding outweighed Mr Bell's right to participate. The Tribunal ruled that the case should proceed in his absence.

THE CHARGES:

Charge 1 (the Renewal Registration Charge 2019/2019)

13. Ms Queffurus reminded the Tribunal that Mr Bell had not lodged a response to the Charges and the burden fell on TDB to prove its case to the civil standard. She drew the Tribunal's attention to relevant parts of the case papers.
14. Mr Bell had the same obligations as all members of ATT. He was obliged to lodge his application to renew his registration for AML supervision by 31 May 2018 and at the same time he was required to provide a copy of his DBS certificate. He did not lodge his registration form until 5 July 2018 and did not provide a DBS certificate: in fact, he still has not done so. As a result of this, his application for registration could not proceed and he is unregistered for the purpose of anti-money laundering legislation.
15. In correspondence Mr Bell has made reference to difficulties in his application for DBS arising from the absence of a copy of his birth certificate. However, in his email of 18 August 2020 he stated that he had just found it. Despite that, the most recent email from Mr Bell shows a screenshot of a receipt for an application for DBS certificate apparently not lodged until 12 January 2021

Charge 2 (the Correspondence Charge)

16. Ms Quefferus drew the Tribunal's attention to correspondence to Mr Bell from ATT and from TDB that was unanswered. By way of example an email from ATT about the DBS certificate was sent to him on 4 September 2018 and not answered until 13 March and correspondence from TDB dated 19 November 2018 had not been replied to by 7 November 2019.

Charge 3 (the Professional Behaviour Charge)

17. Ms Queffurus relied on the repeated failure to reply to correspondence in support of this charge.

TRIBUNAL DECISION:

18. 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 Bell was a man of good character.
19. The Tribunal took into consideration points raised in the correspondence received from Mr Bell.

20. With regard to Charge 1, the Tribunal found this charge proved as pleaded. Not only had Mr Bell failed to provide a copy of his DBS certificate as he should have done on or before 31 May 2018 but additionally he still has not done so.
21. With regard to Charge 2, the Tribunal found this charge proved as pleaded. Important correspondence had been sent to Mr Bell by both ATT and TDB which he had failed to answer either in a reasonable time or at all.
22. With regard to Charge 3, the Tribunal find this charge proved as pleaded. His cumulative failures to reply to correspondence on matters of importance shows a lack of courtesy and consideration to both ATT and TDB.

SANCTION:

23. 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.
24. The Tribunal took into account the TDB Indicative Sanctions Guidance. The Panel bore in mind that Mr Bell had no prior disciplinary findings recorded against him.
25. The Tribunal started its consideration with the minimum sanction proportionate to the level of misconduct found proved.
26. The Tribunal considered that compliance with anti-money laundering obligations was of fundamental public interest and underpinned public confidence in ATT. Mr Bell has failed to comply with an obligation going back to May 2018. Even at the time of this hearing it appears that he has got no further than lodging an application for a DBS certificate the day before the hearing. That is over two and a half years after it should have been lodged with ATT. During that period ATT, TDB and indeed, at earlier hearings of this Tribunal have reminded him of his obligations. In the Tribunal decision of 19 August 2020 it states:

“Mr Bell would be well advised to ensure that he has obtained his DBS certificate and fully remedied his position before the case is next heard “

The above behaviour is aggravated by his failures to reply to ATT and TDB as they tried to resolve the matter.

27. The Tribunal took a very serious view of the actions and inactions of Mr Bell. The Tribunal had considered whether expulsion was necessary. The Tribunal, however, concluded that no lesser sanction than suspension was appropriate and proportionate to reflect the gravity of this case and to ensure that before he regains membership Mr Bell will have complied with his anti-money laundering obligations in full.
28. The Tribunal therefore order that Mr Bell be suspended from membership until such time as he has supplied ATT with a clear DBS certificate.

29. The Tribunal also imposes a fine of £500 to reflect the gravity of the Charges.

COSTS:

30. Miss Queffurus made an application for costs of TDB in the sum of £4118.15 and the Tribunal was provided with a breakdown of those costs.

31. The Tribunal took account of the TDB Guidance on Awarding Costs. The Tribunal noted that Mr Bell had not provided the Tribunal with any evidence as to his means. It saw no exceptional circumstances so as to conclude that Mr Bell should not pay the full costs.

32. The Tribunal orders that Mr Bell pay costs in the sum of £4118.15 within 28 days (or any other period agreed between him and the TDB).

PUBLICITY:

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

Peter Cadman
Chair