

IN THE MATTER OF THE TAXATION DISCIPLINARY BOARD

Reference: TDB/2020/35

THE TAXATION DISCIPLINARY BOARD

– and –

MR MARC HACKNEY
(Membership Number 106764 CIOT)

DECISION AND REASONS

Date of Hearing	13 September 2021
Venue	Virtual using Microsoft Teams
Tribunal Members	
Legally Qualified Chair	Ian Comfort
Professional Member	Ian Luder
Lay Member	Penny Griffith
Tribunal Clerk	Nigel Bremner
Mr Hackney	Not present and not represented

Simplified procedure

1. The Tribunal considered this matter under the simplified procedure pursuant to Regulation 15 of the Taxation Disciplinary Board Scheme Regulations 2014 (revised November 2016) (“the TDSR”). Mr Hackney was not in attendance. In his Response Form dated 31 August 2021, he consented to the hearing proceeding in his absence. In his email to the TDB dated 10 September 2021, he waived his right to the required notice provisions.

Charges

Charge 1

On or about 28 February 2020, Mr Hackney pleaded guilty at the Kingston-upon-Hull Crown Court to an indictment containing the following counts

Count 1

FRAUD BY ABUSE OF POSITION contrary to section 1 of the fraud Act 2006.

“Between the first day of January 2018 and the 31st day of March 2018 committed fraud in that dishonestly and intending thereby to make a gain for himself or another, or to cause loss to another or to expose another to risk of loss, abused your position.”

Count 2

FORGERY, contrary to section 1 of the Forgery and Counterfeiting Act 1981.

“Between the 1st day of January 2018 and the 31st day of March 2018 made a false instrument, namely a Notification of Change of Portfolio Details Form.”

Charge 2

On 7 July 2020, Mr Hackney was sentenced at Kingston-Upon-Hull Crown Court and received a two-year suspended sentence, with a requirement to undertake three hundred hours of community service. Mr Hackney was also ordered to pay a victim surcharge of £140. Mr Hackney was also barred from being a charitable trustee by the Charities Commission for ten years.

Charge 3

Consequent upon the facts and matters set out in Charges 1 and 2 above, Mr Hackney is:

(a) guilty of Conduct Unbefitting pursuant to r.2.1(j) of the TDSR and/or in breach of the following rules of the Professional Rules and Practice Guidance (“PRPG”):

- a) rule 2.1, in that he failed to avoid any action which discredits the profession;
- b) rule 2.2.2, in that he engaged in illegal activity;
- c) rule 2.6.2, in that he failed to uphold the professional standards of the CIOT;
- d) rule 2.6.3, in that he conducted himself in an unbefitting, unlawful or illegal manner which tends to bring discredit upon himself and/or may harm the standing of the profession and/or the CIOT.

and/or in breach of the following rules of the Professional Conduct in Relation to Taxation (“PCRT”):

- (a) rule 2.19, in that he acted in a way that brings him and/or his professional body into disrepute.

Admissions and Finding

- 2. The Tribunal was provided with a copy of the Response Form submitted by Mr Hackney dated 31 August 2021. Mr Hackney admitted all charges.
- 3. On the basis of the admissions the Tribunal found the Charges proved.

Background

- 4. Mr Hackney was a trustee of a charitable organisation, the Cameo Foundation, set up by Ms B aged 79 at the time of the offences. Between 1 January 2018 and 31 March 2018, Mr Hackney fraudulently obtained £300,000 from the Cameo Foundation and used the money to make payments to a number of organisations including sports clubs, building companies and HMRC. He also made unsuccessful attempts on two occasions, to fraudulently obtain further payments of £100,000. In order to perpetuate this fraud, Mr Hackney forged Ms B’s signature to set up a bank account to release funds from the Cameo Foundation.
- 5. On or about 28 February 2020, Mr Hackney pleaded guilty at Kingston-Upon-Hull Crown Court to an indictment containing one count of fraud by abuse of position contrary to section 1(4) of the Fraud Act 2006 and one count of forgery, contrary to section 1 of the Forgery and Counterfeiting Act 1981.
- 6. Mr Hackney received a prison sentence of 24 months suspended for two years, with a requirement that he completes 300 hours of unpaid work. He was also barred by the Charities Commission from being a charitable trustee for a period of 10 years.

Evidence

- 7. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - (i) Certificate of Conviction from Kingston-Upon-Hull Crown Court dated 1 September 2021;
 - (ii) Prosecution opening note;
 - (iii) Basis of Plea before the Crown Court;

- (iv) Papers before the Investigating Committee;
- (v) Response Form from Mr Hackney; and
- (vi) Letter from Mr Hackney to the TDB dated 3 September 2021;
- (vii) Testimonials for Mr Hackney; and
- (viii) Email confirming repayment of funds.

Sanction

8. Having found the Charges proved in relation to Mr Hackney the Tribunal decided in accordance with Regulation 20.6 what action, if any, it should take.
9. In deciding on the appropriate sanction, the Tribunal considered the guidance contained in the Taxation Disciplinary Board's Indicative Sanctions Guidance of December 2020 ("the Guidance") and also noted the sanctions imposed in other similar cases, as recorded in Annex D to the Guidance. It also reminded itself that it should start by considering the least severe sanction and only consider more serious sanctions if satisfied that the lesser sanction is not appropriate in this case.
10. It noted that the purpose of imposing a sanction upon a member, *'is not simply to discipline the individual or firm for any wrongdoing of which he or it 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'*.
11. The Tribunal considered the aggravating and mitigating factors, many of which had been set out in the basis of plea before the Crown Court and in the prosecution opening note. The Court took account of these factors in its sentence.
12. In his letter to the TDB dated 3 September 2021, Mr Hackney acknowledged the seriousness of his offending and its potential impact on the reputation of the profession. He has provided the Tribunal with written testimonials that were before the Court. He says that he made *"a huge error in judgement"* and that he is *"truly remorseful"*. He explains that he has repaid the money in full with interest.
13. Reflecting on his actions Mr Hackney states:
"... I am unfit to be a member of your Institution and have failed to uphold your standards and should be expelled forthwith."
14. Having considered the evidence, the Tribunal was satisfied that taking no further action, ordering the matter to lie on file, a warning or censure were not

appropriate sanctions given the gravity of the charges found proved. The Tribunal noted that public confidence in the honesty of members was of high importance to the public and the profession.

15. The Tribunal considered suspension of Mr Hackney's membership but concluded that his convictions for fraud and forgery were a serious departure from professional standards, an abuse of a position of trust and involved a course of conduct of dishonesty. The matter is so serious that it was fundamentally incompatible with his continued membership of the profession.
16. The Tribunal determined that the appropriate and proportionate sanction necessary to protect the public, uphold standards and maintain confidence in the profession was one of expulsion.
17. The Tribunal also determined that an application for readmission is unlikely to be successful until a period of 10 years has elapsed from the date of this decision, save for exceptional circumstances, for example persuasive evidence of rehabilitation.

Costs

18. The Tribunal had regard to Annex C of the Guidance on the awarding of costs and Regulation 20.6 (f) in dealing with a defendant against whom a charge has been proved. The presumption that an unsuccessful defendant should pay costs was based on the principle that the majority of professional members should not subsidise the minority who, through their own failing, have brought upon themselves disciplinary proceedings.
19. The power to award costs was discretionary. The general principle required exceptional circumstances for a Tribunal not to award costs against an unsuccessful defendant. The Tribunal considered the schedule and considered that the costs outlined were proportionately and reasonably incurred. The Tribunal considered Mr Hackney's representations regarding his financial means.
20. The Tribunal ordered that costs in the sum of £1250.00 be paid by Mr Hackney. These may be in instalments at a level and frequency to be determined by the TDB.

Publication

21. The Tribunal noted the contents of Annex B of the Guidance on the publication of disciplinary and appeal findings and Regulation 28.

22. It noted the general principle that any disciplinary finding made against a member would be published and the member named in the publication of the finding. The purpose of publishing such a decision was not to add further punishment for the member. It was to provide reassurance that the public interest was being protected and that where a complaint was made against a member of one of the professional bodies covered by the Taxation Disciplinary Scheme, there were defined, transparent procedures for examining the complaint in a professional manner and for imposing a sanction upon a member against whom a disciplinary charge had been proved.
23. The Tribunal further noted that under Regulation 28.3, it had a discretion to order that the name of the member or the details of orders made against them should not be published. The Tribunal did not find any circumstances that would justify an absence of publicity.
24. The Tribunal ordered that, in accordance with Regulations 28.1, this order and these findings should be published as soon as practical after the 21-day appeal period.

Ian Comfort
Chair, Disciplinary Tribunal
Taxation Disciplinary Board