

MEETING ON 25th May 2022

B E T W E E N

THE TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR KEVIN JAMES
(ATT Membership No. 178527)

DECISION AND REASONS

Present:

Dr Jonathan Page (Chair, Lay member)

Lorna Jacobs (Lay member)

Julian Stafford (CIOT member)

Mr Nigel Bremner (Clerk to the TDB)

The Committee met via Microsoft Teams

INTRODUCTION

1. This matter was heard on 25th May 2022. Mr James did not attend and was not represented.
2. Mr James faced three charges, as set out at Appendix 1.

BACKGROUND TO THE CHARGES

3. In short, Mr James, on the 26th May 2020, faced disciplinary proceedings brought by the Association of Accounting Technicians (“AAT”). A charge he faced alleged that: “for

an unknown period up until on or around 18 February 2020, whilst a full member of AAT, [Mr James] provided self-employed accountancy services to the public without being registered or licensed to do so or approved as being exempt from holding a licence.”

4. Mr James’ professional or personal conduct was found by the AAT to be in breach of the Code of Professional Ethics and to have posed a risk to the public confidence in the Association or its members. He was ordered to be expelled from the AAT for a period of 3 years.
5. Mr James did not inform the ATT of the disciplinary finding made against him by the AAT, or his expulsion from the Association of Accounting Technicians.
6. Mr James’ expulsion from the AAT was formally referred to the TDB as a complaint on 10th August 2020. Mr James was written to by the TDB notifying him of the complaint. The TDB received no response from him. On 15 September 2020, the TDB sent an email to Mr James, informing him that unless a response was received from him within 10 days, the matter would be referred to the Investigating Committee. No response was received.
7. Further letters, seeking a response from Mr James, were sent to him on 29th September, 7th December 2020. He was informed that the matter would be referred to an Investigating Committee. No response was received.
8. On 10th May 2021, the TDB emailed Mr James a copy of the bundle to be placed before the Investigating Committee, with a request that any comments should be provided by 17th May 2021. No response was received.
9. On 26th May 2021, the Investigating Committee met and determined that the case ought to be referred to an Interim Orders Committee.
10. On 28th May the matter was referred to the Interim Orders Committee. Mr James was written to and informed.

11. On 22nd June 2021, an Interim Orders Committee met and concluded that Mr James membership be suspended and he was ordered to pay costs. On 21st July the TDB received from Mr James £2,550 in settlement of those costs.
12. On 12th August 2021, Mr James' input was sought by the TDB so that the Investigating Committee could be arranged. A hard copy letter, and email was sent to his registered addresses. A response was sought before 27th August, but none was received.
13. On 17th August, Mr James was informed that an Investigating Committee was arranged for 14th September and a final chasing letter (no response) was sent to him on 7th September. Following that Investigating Committee meeting, a prima facie case was found and the matter was referred to the Disciplinary Committee.
14. Mr James was written to and emailed on 25th April 2022 informing him that a Disciplinary Committee had been arranged for 25th May.
15. Further chasing emails and letters were sent on 14th and 23rd May 2022. No response was received.
16. On 25th May 2022 (the date of the hearing) at 08:33, an email from Mr James was received. He apologised for his delay in responding to the TDB and said in the email that he would not be attending the hearing. He outlined his reasons for both, but did not go into significant detail.
17. A completed form was attached in which Mr James accepted the allegations, he agreed to an oral hearing of the matter and indicated that he did not propose to attend the hearing. He also consented to the hearing taking place in his absence. There was no evidence attached giving any more detail about the concerning matters raised in the body of his email.
18. At no stage had any other information or evidence been received by the TDB from Mr James.

PRELIMINARY ISSUES

Service

19. The Committee first considered whether service had been validly affected.
20. The Committee considered the allegations and the evidence before it. Mr James was emailed and written to on 25th April 2022, enclosing the relevant bundle of papers and informing him of the hearing date and telling him that the meeting would be conducted via Microsoft Teams, with a link enclosed. The link was re-sent on 24th May.
21. The email address used was the same address that was used by Mr James to respond to the TDB on 25th May. The address that was used for postal service was the registered address held on TDB records for him.
22. The committee was satisfied that Regulations 14.2 and 31.3 of the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016) (“The Regulations”) had been complied with, insofar as complaint materials had been served more than 28 days prior to the fixed date of the hearing on Mr James.

Proceeding in Absence

23. The Committee had regard to Regulations 17.3 and 17.4, as well as the factors set out in the case of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162
24. It was clear that Mr James had not engaged with this disciplinary process prior to the date of the hearing. He had indicated in the form he sent on the day of the hearing that he did not wish to attend and would not be attending. All reasonable efforts had been made to inform him of the hearing, and it was considered that if the case was adjourned (and neither party were seeking an adjournment) that there was no reason to think that Mr James would attend at a subsequent hearing.

25. The Committee reminded itself that it was only in exceptional cases that proceedings would be conducted in the absence of the member. This was such a case and the Committee so ordered.

DECISION ON THE CHARGES

The relevant paragraphs from the Professional Rules and Practice Guidelines 2018 are included at Appendix 2.

Charge 1

26. Mr James had been expelled from the AAT for a period of 3 years on 26th May 2020. It was clear by the nature of the sanction that the AAT regarded his failings as serious ones, given that 'expulsion' was the most severe sanction that could have been imposed, albeit for a period of not less than 3 years.

27. The nature of the charge before the AAT involved providing self-employed accountancy services to the public without being registered or licensed, which was plainly, on the face of the charge, a serious matter. The AAT decision demonstrated to the Committee that Mr James was a potential risk to the public.

28. The Committee found that Mr James had failed to comply with the relevant laws and regulations pertaining to AAT and that this reflected badly on his professional duties with ATT. As a result, he brought discredit to himself and to the profession generally. Mr James had, in any event, accepted this charge.

Charge 2

29. The Committee were referred to Rule 2.14.2 and the requirement upon Mr James to inform this regulator that he had been subject to a regulatory sanction of another regulator within 2 months of that occurrence. Mr James had not done so. It is right to observe that the ATT were aware by mid-August 2020 of the sanction and wrote to Mr James informing him that it was aware.

30. The Committee found that Mr James had failed to notify the ATT of the AAT's disciplinary action, as he was required to do. Mr James had, in any event, accepted this charge.

Charge 3

31. Mr James failed since August 2020, and right up to the date of this hearing to engage with the ATT's regulatory process. This was a period of 19 months. During that period Mr James provided no explanation for his failure to reply to correspondence by email, telephone or letter. Most of that correspondence sought a response from him as he was, throughout that period, subject to either an investigation or to a disciplinary process.

32. In the email received on the day of the hearing Mr James did advance what may have been a reason for his non-compliance, but the ATT received no evidence in support. As a result it was very difficult to assess how Mr James had been affected by illness during that 19-month period, or longer.

33. The Committee found that Mr James had failed to respond to correspondence from the TDB without unreasonable delay. Mr James had, in any event, accepted this charge. The length of time of that failure by Mr James was of concern and was an aggravating factor of this charge. The Committee concluded that Mr James could not be regulated at the present time.

SANCTION

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

35. The Committee 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.

36. There was Indicative Sanction Guidance, dated January 2022, to which the Committee had regard. The Committee also considered the charges together for the purpose of arriving at the least serious sanction, ensuring that there was no 'double-counting' in respect of charges 2 and 3. The Committee also took into account Mr James admissions (albeit at a very late stage) and his lack of any previous disciplinary matters before this regulator.
37. The Committee considered all of the available sanctions, starting with the least onerous. It considered that taking no action, lying on file, an apology or a warning would not mark these transgressions. Similarly, a censure or suspension (with or without a fine) would not satisfy the public interest.
38. Because of the nature of charges 1 and 2 and the length of time over which charge 3 was committed, the Committee was of the view that expulsion was the minimum sanction that was necessary and proportionate in the circumstances.
39. The Committee further concluded that an application for readmission is unlikely to be successful until a period of 2 years has elapsed from the date of this decision, save for exceptional circumstances, for example persuasive evidence of rehabilitation.

COSTS

40. The ATT sought costs in the sum of £1,686.85. This had been broken down in a schedule that was before the Committee and had been sent to Mr James prior to the hearing. The Committee found that these costs had been reasonably incurred and were reasonable in amount; they were simply a reflection of the time spent by the ATT preparing for this matter.
41. Mr James did not furnish the Committee with any information about his financial circumstances.
42. The Committee ordered Mr James to pay £1,686.85 pursuant to Regulations 20.6 (f) (xii) and 27.1

PUBLICITY

43. In the absence of any information amounting to exceptional circumstances, the Committee ordered publication of these findings and orders pursuant to Regulations 28.1 and 28.4.

Dr Jonathan Page (Chair)

7 June 2022

APPENDIX 1

IN THE DISCIPLINARY TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD

(TDB/2020/24)

B E T W E E N

THE TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR KEVIN JAMES (Membership No. 178527, ATT)

SCHEDULE OF CHARGES

The charges set out below refer to the following rules of the Professional Rules and Practice Guidelines 2018 of the Chartered Institute of Taxation (the “CIOT”) and the Association of Taxation Technicians (the “ATT”) (the “PRPG 2018”), in force from 9 November 2018:

- (1) 2.1 and 2.2.1 (integrity);
- (2) 2.1 and 2.6.3 (professional behaviour);
- (3) 2.14.2 (obligation to notify the ATT);
- (4) 2.13.2 (obligation to respond to correspondence from the TDB).

Charge 1

1.1 On or about 26 May 2020, the Association of Accounting Technicians (“AAT”):

- a) made a finding against Mr James to the effect that he had breached the AAT’s Code of Professional Ethics and to have posed a risk to the public or was likely to undermine public confidence in the AAT or its members;
- b) made an Order expelling Mr James from the AAT for a period of three years.

1.2 The grounds for the Order made by AAT were that:

“For an unknown period up until on or around 18 February 2020, whilst a full member of AAT, [Mr James] provided self-employed accountancy services to the public without being registered or licensed to do so or approved as being exempt from holding a licence.”

1.3 Consequent upon the facts and matters set out in paragraphs 1.1 and 1.2, Mr James is in breach of:

a) rule 2.1, in that Mr James failed to avoid any action which discredits the profession;

b) rule 2.6.3, in that Mr James conducted himself in a manner which was unbecoming and/or unlawful and/or illegal which tends to bring discredit upon a member and/or which may harm the standing of the profession and/or the ATT.

Charge 2

Mr James failed to notify the Head of Professional Standards at the ATT in writing of the disciplinary action taken against him by the AAT or his expulsion from AAT within two months of the date of such action, as required by rule 2.14.2, or at all.

Charge 3

Contrary to rule 2.13.2, Mr James failed to reply to correspondence from the TDB dated:

- 11 August 2020
- 29 September 2020
- 10 May 2021
- 3 June 2021
- 4 June 2021
- 16 June 2021

END OF CHARGES

APPENDIX 2

RULES 2.1, 2.2.1, 2.6, 2.6.2 and 2.6.3 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018

44. Rules 2.1 and 2.6.2 of the PRPG state the following:

2.1 Overview of the fundamental principles

Integrity – to be straightforward and honest in all professional and business relationships

Professional Behaviour – To comply with relevant laws and regulations and avoid any action that discredits the profession

2.1 Integrity.

2.2.1 A member must always be honest in all their 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.

2.6 Professional Behaviour

2.6.2 A member must:

Uphold the professional standards of the ATT as set in the Laws of the ATT;

Take due care in their professional conduct and professional dealings

2.6.3 A member must not:

- *Perform their professional work, or conduct their practice or business relationships, or perform the duties of their employment improperly, inefficiently, negligently or incompletely to such an extent or on such number*

of occasions as to be likely to bring discredit to themselves, to the CIOT or ATT or to the tax profession;

- *Breach the Laws of the CIOT or ATT;*
- *Conduct themselves in an unbefitting, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT or ATT (as the case may be).*

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.

Rule 2.14.2 [2018 Rules]

A member must notify the CIOT or ATT in writing addressed to the Head of Professional Standards CIOT or ATT as appropriate, within 2 months if they:

- Are notified of disciplinary and/or regulatory action upheld against them by another professional body to which a member belongs or by a regulator;
- Are dismissed for misconduct/gross misconduct by their employer;
- Are disqualified as a director or trustee, or enter into a disqualification undertaking;
- Receive a dishonest tax agent conduct notice;
- Receive a monitoring notice from HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation.

A member must provide such relevant details as are reasonably requested by the CIOT and ATT.

A member will be referred to the TDB in relation to the event notified.