

IN THE DISCIPLINARY TRIBUNAL OF THE
TAXATION DISCIPLINARY BOARD

Ref. TDB/2021/15

THE TAXATION DISCIPLINARY BOARD

– and –

MR SIMON OLVER
(CIOT Membership No. 211514)

DECISION AND REASONS

Date of Hearing	4 September 2023
Venue	Virtual using Microsoft Teams
Tribunal Members	
Legally Qualified Chair	Jacqueline Findlay
Professional Member	Will Silsby
Lay Member	Michael McCulley
Tribunal Clerk	Nigel Bremner
Taxation Disciplinary Board (“TDB”)	Represented by Tim Grey, Counsel
Mr Olver	Not present and not represented

Background

1. Mr Olver is a member of the Chartered Institute of Taxation (“CIOT”) and an Advanced Diploma in International Taxation (“ADIT”) student.
2. On 28 April 2021, the CIOT referred Mr Olver to the TDB. The referral related to a criminal conviction received by Mr Olver on or about 13 May 2020, disciplinary action taken against Mr Olver by the Institute of Chartered Accountants of England and Wales (“ICAEW”) on or around 14 April 2021, which resulted in his exclusion from membership of the ICAEW, and failure by Mr Olver to notify CIOT of the conviction or disciplinary action taken by ICAEW.

Evidence

3. The Tribunal had regard to the bundle of 63 pages and the On Table papers. This evidence included but was not limited to:
 - Correspondence between CIOT and TDB.
 - Correspondence between TDB and Mr Olver (letters and emails).
 - Proof of posting of letters.
 - Certificate of Conviction.
 - The City of London Police Report dated 26 June 2020.

Procedure

4. The Tribunal considered the provisions of Regulation 14 of the Taxation Disciplinary Board Scheme Regulations 2014 (as amended November 2016) (“the Regulations”) set out in Appendix 2.
5. The Tribunal was satisfied that the provisions of Regulation 14.1 of the Regulations had been complied with in that the Clerk sent to Mr Olver a letter dated 2 August 2023 (pages 58 and 59) and a copy of that letter was sent by an email of the same date. The Tribunal was satisfied that the correct address was used and the letter was signed for (pages 60 and 61). The Tribunal was satisfied that the email address was the one used by the Defendant when writing to the TDB on 28 July 2021 (page 21). In reaching the decision that the correct postal address and email address had been used the Tribunal took into account that a letter dated 17 April 2023 to the same address (pages 43 and 44) had been signed for (page 45) although not accepted.
6. The letter from the Clerk to Mr Olver dated 2 August 2023 including the following information and enclosed the documents as required:

- a) A notice setting out the charges against Mr Olver notifying him of the date, time and place of the hearing which was not earlier than 28 days after the date on which the notice was sent to Mr Olver.
 - b) A copy of the Taxation Disciplinary Scheme and the Regulations.
 - c) A copy of the report prepared by the Reviewer for the Investigation Committee, including the copy evidence appended to that report.
 - d) A copy of the Investigation Committee's reasons for referring the Complaint to the Disciplinary Tribunal including an appropriate note that this would not be seen by the Disciplinary Tribunal.
 - e) A letter requiring Mr Olver to indicate in writing:
 - i. whether he accepted all or any of the charges made against him, and if not on what grounds he denied them.
 - ii. if he accepted any of the charges made against him whether he had any explanation or mitigation.
 - iii. whether or not he intended to attend and/or be represented at the hearing and, if so, by whom and whether that Representative was authorised to accept service of the documents on his behalf.
7. The Tribunal found that the provisions of Regulation 14.2 of the Regulations had been complied with in that Mr Olver had been served with a paginated and indexed bundle of all the documents on which the TDB intended to rely as required under that provision. The Tribunal found that the letter of 2 August 2023 (pages 58 and 59) was sent to the correct postal address and a copy of that letter, and the enclosures was sent to the correct email address. The letter was sent by recorded delivery and the tracking proof of service appears at pages 60 and 61.
8. The Tribunal proceeded with the hearing in the absence of Mr Olver in accordance with Regulation 17.3 of the Regulations (Appendix 2) having satisfied itself that notice of the hearing had been served on him in accordance with Regulation 31.3 of the Regulations (Appendix 2).

Findings

9. The Tribunal found on the basis of the evidence that the charges set out at Appendix 1 are proved. In reaching the decision the Tribunal relied on the Certificate of Conviction (pages 49 to 51), the City of London Police Report (pages 52 to 53), the ICAEW's report at pages 13 and 14 and the correspondence in the bundle and the On the Table papers.
10. The Tribunal found that Mr Olver was in breach of:
 - Rule 2.2.1, in that Mr Olver was not honest in his professional work; and

- Rule 2.2.2, in that Mr Olver engaged in illegal activity and
- Rule 2.6.3, in that Mr Olver performed his professional work or the duties of his employment improperly to such an extent and on such number of occasions as to be likely to bring discredit to himself, to the CIOT, and to the tax profession and that Mr Olver conducted himself in a manner which was unbecoming and unlawful and illegal which tends to bring discredit upon a member and which may harm the standing of the profession and the CIOT.
- Rule 2.14.1, in that Mr Olver failed to inform the CIOT within two months of the charge for the offences set out in Appendix 1, and his conviction.
- Rule 2.14.2, in that Mr Olver failed to inform the CIOT in writing of the disciplinary action upheld against him by the ICAEW within two months as required.
- Rule 2.13.2, in that Mr Olver failed to respond to correspondence from the TDB.

Sanction

11. Having found the charge proved in relation to Mr Olver the Tribunal decided in accordance with Regulation 20.6 what action, if any, it should take.
12. In deciding on the appropriate sanction, the Tribunal considered the guidance contained in the Taxation Disciplinary Board's Indicative Sanctions Guidance of December 2020 (revised January 2023) ("the Guidance") and also noted the sanctions imposed in other similar cases in Annex D. The Tribunal has borne in mind in approaching the task 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.
13. 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'*.
14. The Tribunal considered the aggravating and mitigating factors and referred to the Guidance. The Tribunal considered the mitigating factors put forward by Mr Olver in his email of 28 July 2021 (page 21). Mr Olver stated:
 - "I am truly sorry for my actions which were as result of:*
 - bereavement (losing a child)*
 - debt (wife ill and unable to work)*
 - family illness (cancer)*

-overwork (loss of team members who were not replaced, not being allowed paternity leave and struggle with mental health)."

15. Whilst sympathetic to Mr Olver's personal circumstances, the Tribunal found there were no mitigating factors in respect of the charges proved. In reaching its decision the Tribunal took into account that were the large amounts involved (£2.9 million) in his dishonesty and that Mr Olver had betrayed the trust of his employer. Despite claiming that he needed the money for debt payments the money taken was used to fund a luxury lifestyle. The dishonesty was planned, and the thefts had been undertaken on two occasions. Mr Olver had copied his manager's signature with the intention of submitting a third claim for £1,550,000. The breach of trust had an impact on his employers and his colleagues. These were very serious matters.
16. The Tribunal considered that taking No Further Action, making an Order to Rest on the File, issuing a Warning, Ordering an Apology or Censure were insufficient sanctions to the nature and seriousness of the charges. In addition, failing to inform a regulatory body and a failure to respond to correspondence from a regulator undermines the purpose of regulation, which is to protect the public, uphold standards and maintain confidence in the profession.
17. The Tribunal noted that the starting point in the Guidance point for offences in dishonesty was one of expulsion. The Tribunal considered whether Suspension was an appropriate sanction. The Tribunal found there were no exceptional circumstances that could justify a Suspension rather than an Expulsion.
18. Taking account of all of the circumstances, the Tribunal determined that the appropriate and proportionate sanction was one of Expulsion from membership of CIOT. The nature and gravity of Mr Olver's offending was fundamentally incompatible with continued membership of CIOT. Expulsion from CIOT results in him no longer being an ADIT student and in view of the sanction it was not appropriate to impose any additional sanctions in relation to Charges 2 and 3.
19. The Tribunal considered that an application for readmission would be unlikely to be successful until a period of a least 10 years had elapsed from the date of this decision, save for in exceptional circumstances, for example, persuasive evidence of rehabilitation.

Costs

20. 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 is 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.

21. The power to award costs is 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 noted that Mr Olver had made no representations regarding either the costs applied for or his financial means. The Tribunal found that the draft Costs Schedule was sent to Mr Olver attached to an email dated 25 August 2023 (On Table papers).
22. The Tribunal ordered that costs in the sum of £3,776 be paid by Mr Olver.

Publication

23. The Tribunal noted the contents of Annex B of the Guidance on the publication of disciplinary and appeal findings and Regulation 28.
24. 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.
25. 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 order for no publicity.
26. 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. The finding would remain on the TDB website for a period of 3 years in accordance with Annex B of the Guidance.
27. This decision will take effect in accordance with Regulations 20.9 and 21.1 of the Regulations.

Jacqueline Findlay

Chair, Disciplinary Tribunal

Taxation Disciplinary Board

APPENDIX 1

Charge 1

On or around 13 May 2020, Mr Olver pleaded guilty at Southwark Crown Court to:

two offences of Fraud by Abuse of Position, contrary to Sections 1 and 4 of the Fraud Act 2006, and

one count of making an article for use in fraud, contrary to Section 7 of the Fraud Act 2006

On 25 June 2020, Mr Olver was sentenced at Southwark Crown Court to a term of imprisonment of four and a half years.

On or around 14 April 2021, a Disciplinary Tribunal of the ICAEW made an Order of exclusion against Mr Olver and ordered him to pay costs of £3,900.

In breach of Rule 2.2.1 Mr Olver was not honest in his professional work.

In breach of Rule 2.2.2 Mr Olver engaged in illegal activity.

In breach of Rule 2.6.3 Mr Olver performed his professional work or the duties of his employment improperly to such an extent and on such number of occasions as to be likely to bring discredit to himself, to the CIOT, and to the tax profession and that Mr Olver conducted himself in a manner which was unbecoming and unlawful and illegal which tends to bring discredit upon a member and which may harm the standing of the profession and the CIOT.

Charge 2

In breach of Rule 2.14.1, Mr Olver failed to inform the CIOT:

- (i) Within two months of the date of his arrest or the date that he was charged for the above offences; and/or
- (ii) of the fact of his criminal conviction for the above offences, within two months of 13 May 2020, being the date on which he received the conviction at the Southwark Crown Court.

In breach of Rule 2.14.2, Mr Olver failed to inform the CIOT in writing of the disciplinary action upheld against him by the ICAEW within two months of 14 April 2021, being the date on which the Order for exclusion was made against him.

Charge 3

In breach of Rule 2.13.2, Mr Olver failed to respond at all to the following correspondence from the TDB:

- i. an email from the TDB dated 12 April 2023
- ii. a letter from the TDB dated 17 April 2023
- iii. an email from the TDB dated 10 May 2023

APPENDIX 2

THE TAXATION DISCIPLINARY SCHEME REGULATIONS 2014 (amended November 2016)

14. Initial Procedure for Cases Referred from the Investigation Committee

14.1 On receipt of the charge the Clerk shall send the following documents to the Defendant, either together or at different times and supplemented as necessary from time to time:

- a) A notice setting out the Charge against the Defendant notifying of the date (which shall, unless the Defendant otherwise agrees, be not earlier than 28 days after the date on which the notice is sent to the defendant), time and place of the hearing.
- b) A copy of the Scheme and these Regulations
- c) A copy of the report prepared by the Reviewer for the Investigation Committee, including the copy evidence appended to that report;
- d) A copy of the Investigation Committee's reasons for referring the Complaint to the Disciplinary Tribunal. The Clerk shall expressly draw the Defendant's attention to Regulation 5.8 of these Regulations.
- e) A letter requiring the defendant indicating writing:
 - i. whether he accepts all or any of the charges made against him, and if not on what grounds he denies them.
 - ii. if he accepts any of the charges made against him whether he has any explanation or mitigation
 - iii. whether or not he intends to attend and /or be represented at the hearing and, if so, by whom and whether that Representative is authorised to accept service of documents on his behalf.

17. Hearings

17.3 if the Defendant does not attend and is not represented at the hearing then, provided the Disciplinary Tribunal is satisfied that the notice required was served on him, the Disciplinary Tribunal may proceed with the hearing in his absence.

17.4 Before deciding to hear and determine any proceedings in the absence of the Defendant or his Representative the Disciplinary Tribunal shall consider any representations, in writing or otherwise, submitted by or on behalf of the defendant in response to the notice of hearing and should give any party present at the hearing an opportunity to be heard in regard to those representations.

20. Disciplinary Tribunal decision

20.9 The decision shall be treated as effective on the date that the written order is deemed served on the Defendant.

21.1 The Board or a Defendant against whom any order has been made by a Disciplinary Tribunal may, within the period of 21 days beginning with the effective date of the order, or such longer period as the Chairman of that Tribunal may allow, give Notice of Appeal in accordance with these Regulations.

31. General

31.3 Any notice or document required to be served on the Defendant may be served upon him personally or by sending it by first class registered or recorded delivery post addressed to the Defendant at his last known place of business or his last place of abode appearing in the register of Members held by a Participant of which the Defendant is a Member. Where documents are served by post, service shall be deemed to have been effected on the second business day after the letter was despatched.

APPENDIX 3

RULES 2.1, 2.2, 2.2.1, 2.2.2, 2.6, 2.6.2, 2.6.3, 2.13, 2.13.2, 2.14, 2.14.1, 2.14.2 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018 (“PRPG”)

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.

2.2 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.

2.2.2 A member must not engage in or be party (directly or indirectly) to any illegal activity.

2.6 Professional Behaviour

2.6.2 A member must:

- Uphold the professional standards of the CIOT and ATT as set out in the laws of the CIOT and 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 unbecoming, 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).

Rule 2.13 Compliance with the disciplinary process and order from the TDB

2.13.2 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.

Failure to respond to correspondence or to comply with an order from the TDB without delay will in itself constitute a disciplinary matter.

2.14 Obligation to notify the CIOT and ATT

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

- Arrested on suspicion of: or
- Charged with; or
- Convicted of a criminal offence. A criminal includes an offence committed in the United Kingdom or abroad.

A member must supply details of the nature of the allegation or conviction and provide such relevant information in relation to it as is reasonably requested.

Rule 2.14.2

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;

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