

IN THE DISCIPLINARY TRIBUNAL OF THE
TAXATION DISCIPLINARY BOARD

Ref: TDB/2022/08

THE TAXATION DISCIPLINARY BOARD

– and –

MR PAUL DYER
(CIOT Membership No. 131125)

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 Dyer	Not present and not represented

Background

1. Mr Dyer is a member of the Chartered Institute of Taxation (“CIOT”).
2. On 2 February 2022, the CIOT referred Mr Dyer to the TDB. The referral related to disciplinary action taken by the Institute of Chartered Accountants of England and Wales (“ICAEW”) resulting in Mr Dyer being expelled from membership of ICAEW.

Evidence

3. The Tribunal had regard to the bundle of 49 pages and the On Table papers (16 pages).

This evidence included but was not limited to:

Correspondence between CIOT and TDB.

Correspondence between TDB and Mr Dyer (letters and emails).

Mr Dyer’s Response.

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 although the Clerk sent to Mr Dyer an email with attachments dated 31 July 2023 (page 39) to the incorrect email address, an email with attachments dated 25 August 2023 (page 42) was sent to the correct address. The Tribunal was satisfied that Mr Dyer had been sent the following information as required:
 - a) A notice setting out the charges against Mr Dyer notifying him of the date, time and place of the hearing.
 - 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 Dyer 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.
6. The Tribunal was satisfied that the requirement for Mr Dyer to be given notice of 28 days of today's proceedings could be dispensed with pursuant to the power in Regulation 33.1 of the Regulations. The Tribunal was satisfied that it was just so to do and was justified and reasonable in all the circumstances taking into account that Mr Dyer had stated that he did not intend to attend and was content for a decision to be made in his absence (On Table papers).

Findings

7. The Tribunal found on the basis of the evidence and on the basis of Mr Dyer's admissions that the charges set out at Appendix 1 and detailed in paragraph 9 below are proved.
8. The charges set out below refer to the Rules of the Professional Rules and Practice Guidelines 2018 of the CIOT and the Association of Taxation Technicians ("ATT") (the "PRPG 2018"), in force from 9 November 2018.
9. The Tribunal found that Mr Dyer was in breach of the following:
 - Rule 2.10.1 in that Mr Dyer failed to comply with the UK's AML legislation as required.
 - Rule 2.14.2, in that Mr Dyer failed to notify the CIOT in writing of the disciplinary action upheld against him by the ICAEW within two months as required. The date of the decision of the ICAEW and the expulsion was 6 October 2021. Mr Dyer disclosed on his Annual Return submitted on 17 January 2022 that he had been excluded from membership of ICAEW.
 - Rule 2.6.3, in that Mr Dyer 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 Dyer conducted himself in a manner which was unbecoming and which tends to bring discredit upon a member and which may harm the standing of the profession and the CIOT.
 - Rule 7.6.5, in that Mr Dyer failed to keep clients' money separate from money belonging to the firm by using his personal account for clients' money which was not kept in a separate client account.
 - The Fundamental Principle of Professional Behaviour in that he failed to take due care in all his professional conduct and professional dealings. He performed his professional work inefficiently, negligently and incompetently to

such an extent as to be likely to bring discredit to himself, to the CIOT and to the tax profession. He conducted himself in an unbefitting, unlawful and illegal manner which tended to bring discredit upon him and the standing of the CIOT and the profession.

10. The Tribunal was not satisfied that there was a breach of Rule 7.6.3 on the basis that Mr Dyer had not used a client account in his business and accordingly could not be said to be in breach of this Rule requiring him to be mindful of the money laundering legislation when allowing money to be passed through the client account.

Sanction

11. Having found the charges proved in relation to Mr Dyer 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 TDB's Indicative Sanctions Guidance of December 2020 (revised January 2022 and May 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. The Tribunal 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 in making its decision. The Tribunal considered the mitigating factors put forward by Mr Dyer in his letter of 4 December 2022 (page 25). Mr Dyer stated:

"Registration for AML was not completed by ICAEW. I have now registered with CIOT. The money received from HMRC on behalf of clients was held in my own account until I was aware of the amount, then I withdrew the money to pay cash to the clients. Since the enquiry started, I have not held any clients' money on my own account. I have a clients account which has not been used. Failure to comply with accounting procedures have been corrected since that date. I would like a practising certificate from CIOT but I have not applied for such a certificate. I do not have any clients that need an audit report and all my clients are under the classification needing no authorised certificate."

15. In his letter of 2 June 2023 (page 37) Mr Dyer stated as follows:

"I qualified as a Chartered Accountant in 1969 and I became a member of Institute of Taxation in August 1970. Tax work has been the main thought in my career after I qualified."

16. In his letter of 10 May 2023 (page 38) Mr Dyer stated as follows:

“I was a member of ICAEW since 1969, but I ceased to be auditor and advice for business matters some time ago. I had difficulty in registering with ICAEW for AML. I also had difficulty in complying with FRS 102. I explained to ICAEW why the clients’ money was held on behalf of clients – in my person account – as they preferred cash. Since the time of the inquiry I was accepted by ClOT for AML. I now comply with FRS 102 requirements.”

17. In his letter of 27 August 2023 (page 44) Mr Dyer stated as follows:

“Initially I had a clients account at Midland bank, Beeston, Nottingham. I paid a cheque into the account and paid the amount due to the client. The cheque to the client was not accepted as there was insufficient funds in the account. Midland bank had not entered the amount, and not much of an apology. After that time I closed the clients account and I have always used my own account for business purposes. No overdraft was used.

Clients needed cash for the tax refund. I was not aware of the amount in the bank account until I checked the balance in Ruislip or Exeter and then I drew cash from the bank in Beeston to give the cash to the client. I had receipts from the client. After the inquiries with ICAEW no tax claim has been paid into my account. It is paid direct to the clients.

I attempted to register with ICAEW for AML proceedings. Nothing took place so I registered with ClOT. Two people came to visit me to explain AML procedures after I was registered.

Small companies have files completed under FRS 102 as an audit is not required. This duty has been completed in the last 3 years and I will continue until I retire.”

18. The Tribunal found there were limited mitigating factors in respect of the charges proved. The Tribunal took into account that Mr Dyer had fully admitted the breaches and accepted that he had failed to keep up with the legislation and had failed to keep himself informed.
19. In reaching its decision the Tribunal took into account that the breaches occurred on a large number of occasions and over the protracted period of time of five-and-a-half years. On two occasions Mr Dyer failed to ensure client money in excess of £10,000 for more than 30 days was paid into a designated client bank account. Mr Dyer showed little regret for his actions and demonstrated limited commitment to ensuring that in the future he would be complying with the legislative requirements and professional standards expected.
20. The Tribunal considered that taking No Further Action, making an Order to Rest on the File, issuing a Warning, Ordering an Apology, imposing a Fine or Censure were insufficient sanctions to the nature and seriousness of the charges. In addition, failing to inform a regulatory body undermines the purpose of regulation,

which is to protect the public, uphold standards and maintain confidence in the profession.

21. The Tribunal considered that there was a risk of a recurrence of the misconduct by Mr Dyer and that the protection of the public could not be assured by a temporary exclusion from the benefits of membership taking into account the length of time over which the breaches had occurred, and the lack of commitment expressed by Mr Dyer to ensure compliance in the future.
22. The Tribunal found Expulsion was appropriate as the only means of protecting the public and the prolonged persistence of the misconduct was so serious as to undermine the confidence in the profession if a lesser sanction were to be imposed. In reaching this decision the Tribunal took into account that the breaches were a serious departure from the relevant professional standards and Mr Dyer had not shown that he had an understanding or appreciation of the seriousness of his actions or the consequences.
23. 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 breaches were fundamentally incompatible with continued membership of CIOT.
24. The Tribunal considered that an application for readmission would be unlikely to be successful until a period of a least 2 years had elapsed from the date of this decision, save for in exceptional circumstances, for example, if Mr Dyer satisfied CIOT at his own expense that he was able and committed to complying with all AML requirements.

Costs

25. 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.
26. 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 Dyer 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 Dyer attached to an email dated 28 August 2023 (On Table papers).
27. The Tribunal ordered that costs in the sum of £3,451.00 be paid by Mr Dyer.

Publication

28. The Tribunal noted the contents of Annex B of the Guidance on the publication of disciplinary and appeal findings and Regulation 28.
29. 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.
30. 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.
31. 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.
32. 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 6 October 2021 by his own admission, the Institute of Chartered Accountants in England and Wales (ICAEW) found the following complaints proved against him:

- That on 126 occasions over five-and-a-half year period he retained client money in his personal bank account;
- That on two occasions he failed to ensure client money in excess of £10,000, held for more than 30 days was paid into a designated client bank account;

- That for a period in excess of five years he failed to comply with The Money Laundering Regulations 2007, in that he did not carry out due diligence risk assessments for all his clients;
- That he prepared financial statements for Company A in 2016 that failed to comply with the Generally Accepted Accountancy Principles (“GAAP”);
- That he prepared financial statements for Company A in 2017 that failed to comply with the GAAP.

Mr Dyer was excluded from membership of ICAEW in order to pay costs of £12,316.

In breach of Rule 2.10.1 Mr Dyer failed to comply with the UK’s AML legislation in that he did not carry out due diligence risk assessments for all his clients.

In breach of Rule 2.6.3 Mr Dyer 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.

In breach of Rule 7.6.5 Mr Dyer failed to keep clients’ money separate from money belonging to the firm and in a separate client account.

In breach of The Fundamental Principle of Professional Behaviour Mr Dyer:

- Failed to take due care in all his professional conduct and professional dealings;
- Performed his professional work inefficiently, negligently and/or incompetently to such an extent as to be likely to bring discredit to themselves, to the CIOT, to ATT and to the tax profession.
- Conducted himself in an unbecoming, unlawful and/or illegal manner, which tended to bring discredit upon him and/or the standing of the ATT, the CIOT and/or the profession.

Charge 2

Following ICAEW’s findings on 6 October 2021, Mr Dyer failed to inform CIOT within two months of disciplinary action upheld against him by another professional regulator of which he was a member.

In breach of Rule 2.14.2 which states 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.

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.

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.

33. Power to dispense with the requirements of the Regulations

33.1 The Disciplinary Tribunal may in exceptional circumstances dispense with any requirement of these regulations in respect to notices, service of documents or time limits in any case where it appears to the relevant Tribunal to be just so to do. Such a decision must be justified by the Disciplinary Tribunal as the case may be and must be reasonable in all the circumstances.

APPENDIX 3

RULES 2.10.1, 7.6.3, 7.6.5, 2.10.1 and 2.14.2 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018 (“PRPG”)

2.1 Overview of the fundamental principles

A member must always comply with the following fundamental principles:

Integrity - to be straightforward and honest in all professional and business relationships.

Objectivity - to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

Professional competence and due care - to maintain professional knowledge and skills at the level required to ensure that a client or employer receives competent professional service based on current developments in practise, legislation, techniques and act diligently and in accordance with applicable technical and professional standards.

Confidentiality - to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of a member or third parties.

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).

2.10.1 Compliance with Anti Money Laundering legislation and registration

2.10.1 A member must comply with the UK's AML legislation in force from time to time. A member must act in accordance with the Consultative Committee of Accountancy Bodies ('CCAB') anti money laundering guidance including the appendix for tax practitioners.

2.14 Obligation to notify the CIOT and ATT

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.

7.6 Clients' money

7.6.3 A member is reminded to consider the money laundering legislation when allowing money to be passed through the client account.

7.6.5 Clients' money must be kept separate from money belonging to the firm and kept in a separate client account. A client account can be a current or deposit account at a bank or building society in the name of a member or their firm but it must also include the word 'client' in the title of the account. Clients' money can be kept either in a general client account, or in separate client accounts each designated with the name of a specific client, or in both.