

TAXATION DISCIPLINARY BOARD

TDB

v

ALISON WATSON

(CIOT number 136727)

DEFENDANT

INTRODUCTION

1. The Disciplinary Tribunal sat on 14 December 2023 in an on-line hearing. The Tribunal was chaired by Mr Simon Barnes (barrister), sitting with Dr Angela Brown (lay member) and Ms Natalie Miller (professional member). The TDB was represented by Mr Joe O’Leary (barrister). Ms Watson did not attend and was not represented. It was noted at the outset that one of the members of the Tribunal had observed the meeting of the Investigation Committee in this case as part of their training. The Tribunal considered whether that would cause any prejudice to this hearing. It concluded that it would not because: i) the purpose of the two hearings was different; ii) the member had only observed for training purposes and had not taken part; and iii) the Tribunal was comprised of professional members who were capable of disregarding any irrelevant or prejudicial information. The Tribunal therefore considered that it was fair and in the interests of justice to proceed.
2. The Tribunal had before it a main bundle and a supplementary bundle of documents which included the following evidence:
 - a. Complaint from the Chartered Institute of Taxation dated 9 February 2022
 - b. Order of the Institute of Chartered Accountants in England and Wales (‘ICAEW’) Audit Registration Committee (‘ARC’) 13 August 2020
 - c. Decision of the ICAEW Review Committee 26 March 2021
 - d. Initial letter to Member dated 17 July 2023
 - e. Ms Watson’s email response to the TDB dated 30 August 2023
 - f. Ms Watson’s response form to the TDB dated 1 December 2023
 - g. Written submissions from Ms Watson

SERVICE AND PROCEEDING IN ABSENCE

3. Mr O’Leary addressed the Tribunal on the issues of service and proceeding in absence.
4. The Tribunal noted that on 13 November 2023 a letter advising Ms Watson of the date, time and format of the hearing was sent by recorded post and email. The letter enclosed the case papers, plus the relevant guidance notes and rules. It advised that the Tribunal may proceed in Ms Watson’s absence if she did not attend. The bundle contained confirmation that the email had been read, plus confirmation of posting. Ms Watson had returned a response form in which she indicated that she agreed to the hearing taking place in her absence. In the accompanying letter she stated that she did not wish to attend an oral hearing.
5. In light of the above, the Tribunal found that service had been effected in accordance with the regulations. The Tribunal considered the principles in the cases of R v Hayward and others [2001] EWCA Crim 168; R v Jones [2002] UKHL 5, and, in the regulatory context, General Medical Council v Adeogba [2016] EWCA Civ 162. It decided that it was fair and appropriate to proceed in the absence of Ms Watson as her responses showed that she was aware of the hearing and had made an informed decision not to attend. There was nothing to suggest that an adjournment would secure her attendance at a later date. Whilst there was some disadvantage to Ms Watson in terms of her not being able to address the Tribunal, she had submitted written representations and it was in the public interest to proceed.

CHARGES

6. The Chair queried whether charge 3.3 was accurately drafted on the basis that email correspondence in the bundle from ICAEW to the TDB stated that although the ARC had met on 13 August 2020, its decision letter went out on 4 September 2020 and came into effect on 22 September 2020. There was therefore a question as to when the 2 month period began because rule 2.14.2 referred to the date when the member was “notified of disciplinary and/or regulatory action upheld against them by another professional body”. It was unclear when Ms Watson had been so notified. Having heard submissions from Mr O’Leary, the Tribunal decided that this was a matter of form rather than substance and it was therefore appropriate to exercise its general power under regulation 33.1 to make a minor amendment to the charge (as suggested by Mr O’Leary). This was on the basis that, as per regulation 17.6, this was a technical fault with the charge and it would not cause unfairness to Ms Watson to amend it. The charges below reflect the change which was made. The Tribunal did not consider that the same issue arose in relation to the meeting of the ICAEW’s Review Committee because it was clear from the minutes of that meeting that Ms Watson was in attendance so it could be inferred that she was aware of the committee’s decision at the time it was made.

Charge 1

1.1 The Defendant was at all material times the principal and responsible individual of DSM CA Limited, Clitheroe (the "Firm").

1.2 On 13 August 2020 the Audit Registration Committee ("ARC") of the Institute of Chartered Accountants in England and Wales ("ICAEW") determined that the registration of the Firm as company auditor be withdrawn under audit regulation 7.03g and 7.03i of ICAEW's Audit Regulations and Guidance on the basis of its failure to comply with conditions previously imposed by the ARC to submit the results of external hot file reviews within one month of their completion and its weaknesses in audit work. The Firm agreed to pay a regulatory penalty of £10,000.

1.3 The ARC also withdrew the responsible individual status of the Defendant.

1.4 By virtue of the disciplinary and/or regulatory action taken by ICAEW's Audit Registration Committee in relation to the Defendant referred to in Charges 1.2 and/or 1.3 above, the Defendant has conducted herself in an unbecoming manner which tends to bring discredit upon herself and/or may harm the standing of the profession and/or the CIOT contrary to rule 2.6.3 of the PRPG.

Charge 2

2.1 On 26 March 2021, the Defendant was subject to a finding by ICAEW's Review Committee that the Firm had:

(i) Failed to comply with previously imposed requirements for hot and cold file reviews in breach of AR 6.06.

(ii) Demonstrated serious and wide-ranging failures in the quality of its audit work in breach of AR 3.10

2.2 By reason of the finding at Charge 2.1, ICAEW's Review Committee ordered that:

(i) the audit registration of the Firm be withdrawn pursuant to regulations 7.03(g) and 7.03(i) of the Audit Regulations and Guidance on the basis that the Firm had failed repeatedly to comply with the condition imposed in 2017 to submit hot and cold file reviews to ICAEW.

(ii) The Responsible Individual status of the Defendant shall cease pursuant to regulation 4.08(f) of the Audit Regulations and Guidance.

(iii) the Firm shall pay costs to ICAEW of £7,560 within 30 days of notice of this decision being given to it.

2.3 By virtue of the disciplinary and/or regulatory action taken by ICAEW's Review Committee in relation to the Defendant referred to in Charges 2.1 and/or 2.2 above, the Defendant has conducted herself in an unbecoming manner which tends to bring discredit upon herself and/or may harm the standing of the profession and/or the CIOT contrary to rule 2.6.3 of the PRPG.

Charge 3

3.1 In her 2020 annual return, submitted to CIOT on 17 January 2021, the Defendant responded to the question "Have you ever been the subject of disciplinary action by a professional body, employer or regulatory authority?" as follows: "ICAEW audit penalty re not providing some hot file reviews following audit visit. This was due to a misunderstanding arising some 3 years ago. Hot file reviews have been provided to ICAEW since then. Penalty not contested"

3.2 In her 2021 Annual return, submitted to CIOT on 30 January 2022, the Defendant responded to the question "Have you ever been the subject of disciplinary action by a professional body, employer or regulatory authority?" with "Audit RI registration withdrawn in April 2021".

3.3 The Defendant failed to notify the Head of Professional Standards at CIOT within 2 months of ~~13 August 2020~~ 22 September 2020 and/or of 26 March 2021 of the regulatory action referred to in Charges 1 and 2 having been upheld against her by another professional body to which she belonged contrary to rule 2.14.2.

BACKGROUND

7. Ms Watson is a member of the CIOT. At the material time she worked at the firm DSM CA Limited of Clitheroe, UK ('DSM').
8. DSM was incorporated on 22 October 2008 and became audit registered with the ICAEW on 28 September 2009. Ms Watson had been the responsible individual at DSM since 2009.
9. The ICAEW's Quality Assurance Department ('QAD') conducted an audit review visit to DSM in April 2017. As a result of that visit, DSM was referred to the Audit Registration Committee ('ARC') of the ICAEW. On 13 December 2017 the ARC imposed a number of requirements on DSM including that external hot file reviews ('HFR') were to be carried out on all of DSM's audits and the results of the HFR were to be submitted to ICAEW within one month of their completion; and that no audit reports were to be signed until an external hot file review had been carried out. In its decision letter dated 22

December 2017, the ARC said it had seriously considered withdrawing DSM's audit registration due to its continued failures and its reliance on HFRs.

10. The next QAD visit took place on 18 and 19 February 2020 and 4 March 2020. The areas of concern identified by the QAD fell into two categories. One was the failure of DSM to submit file reviews as required by the condition imposed in 2017 by the ARC. Ms Watson disagreed that DSM must have realised it needed to provide HFRs for all the companies in a particular group. She accepted, however, that the HFRs for other companies for the 2017 year end had not been sent to ICAEW due to an oversight. She said a more formal review and response procedure for submission of HFRs to the QAD had since been introduced. The second area of concern was the quality of DSM's audit work. The findings of the 2020 QAD visit were that the firm's audit work had not improved since the QAD visit in 2017. The QAD found significant weakness in audit evidence and documentation, though it noted that the poor quality of documentation on the audit files made it difficult to assess the full extent of the failings.
11. Ms Watson disagreed with some of the criticisms by the QAD and highlighted that one of the key actions would be that the audit manager would spend more time on location at the clients' offices with the audit team and that, following the Covid-19 pandemic, it was now envisaged that more of the audit work would be done by the audit manager. However, the QAD team were of the view that the remedial action proposed would not be effective, given that similar issues had been live since 2010. In the QAD's view the firm had been unable to demonstrate and sustain high levels of audit work. As a result of that, the matter was referred back to the ARC with a recommendation that DSM's audit registration be withdrawn.
12. On 13 August 2020 the Audit Registration Committee ('ARC') of the ICAEW made the following decision:

The registration as company auditor of DSM CA Limited, Clitheroe, United Kingdom, was withdrawn on 22 September 2020 under audit regulation 7.03g and 7.03i of the Audit Regulations and Guidance, on the basis of its failure to comply with conditions previously given to the ICAEW and its weaknesses in audit work.

In accordance with regulation 4.08(f) of the Audit Regulations, the ARC also withdrew the responsible individual status of Miss Alison Watson.
13. Under ICAEW procedures, it is possible for a firm to request that a decision of the ARC is reviewed by the ICAEW's Review Committee ('RC'). At a review, the RC considers the matter afresh and reaches a new decision following a hearing. The effect of a firm applying to the RC is that the decision of the ARC is set aside and does not come into effect.

14. Ms Watson applied for a review of the ARC's decision to withdraw the audit registration of DSM, and the decision to withdraw her responsible individual status. The review hearing took place on 26 March 2021. Ms Watson gave oral evidence.

15. The RC found that:

DSM had failed to comply with requirements imposed in December 2017 for hot and cold file reviews in breach of rules which required a registered auditor to provide such information to the ARC as it requires.

The HFRs that had been submitted demonstrated serious and wide-ranging failures by DSM in the quality of its audit work. There was little, if any, evidence of improvement over time. DSM had not been able to achieve any sustained improvement in its own audit work, despite having plenty of opportunities to do so.

16. The RC noted that DSM had been given a stark warning in December 2017 when the ARC had seriously considered removing its audit registration. Despite this, the QAD visit in 2020 had found that similar issues persisted. The RC decided that the only appropriate order was to remove DSM's audit registration on the basis that i) DSM had failed repeatedly to comply with the condition imposed in 2017 to submit hot and cold file reviews to ICAEW; and ii) that the DSM's continued registration was likely to adversely affect an audit client or other person. Given the issues which had been repeatedly raised in the HFRs and at the QAD visits, the RC had no confidence that the Firm was able to achieve the necessary standards of auditing work. Given Ms Watson's status as responsible individual for DSM, she bore culpability for DSM's failings. The RC was satisfied it was therefore appropriate to cease Ms Watson's responsible individual status.

17. The RC made the following order:

"a) The audit registration of DSM CA Limited is withdrawn pursuant to regulations 7.03(g) and 7.03(i) of the Audit Regulations and Guidance.

b) The Responsible Individual status of Miss Alison J Watson FCA shall cease pursuant to regulation 4.08(f) of the Audit Regulations and Guidance.

c) DSM CA Limited shall pay costs to ICAEW of £7,560 within 30 days of notice of this decision being given to it.

d) This decision shall be publicised on the ICAEW website."

18. On 9 February 2022, the CIOT referred Ms Watson to the TDB for the two disciplinary sanctions by ICAEW. The CIOT was concerned that the issues raised by ICAEW at the

time of the first disciplinary case had not been fully addressed by Ms Watson, resulting in further disciplinary action by the ICAEW. The referral to the TDB was made for the repeated lack of compliance with ICAEW's requirements together with the late notification to the CIOT of the disciplinary offences.

19. On 17 July 2023, TDB wrote to Ms Watson providing details of the complaint by the CIOT and inviting her written response. Ms Watson replied in an email sent on 30 August 2023. She made various detailed points relating to the audit work in question. In particular, she stated that following the 2017 visit, all audit files were subject to HFR although not all of them were sent to ICAEW.
20. On 12 October 2023 the TDB's Investigation Committee referred the complaint to the Disciplinary Tribunal.

DECISION ON THE CHARGES

21. The Tribunal proceeded under the simplified procedure in regulation 15. Mr O'Leary summarised the evidence.
22. In her Response Form dated 1 December 2023, Ms Watson confirmed that she admitted all of the Charges.
23. The Tribunal found charges 1.1 – 1.3 proved on the basis of Ms Watson's admissions and the fact that the ARC's decision was in the bundle. The Tribunal found charge 1.4 proved on the basis that although the regulatory findings did not concern tax, as the designated responsible individual, Ms Watson's conduct had been found lacking by ICAEW which had therefore discredited her. For the same reason, her conduct was unbecoming and it also, albeit to a limited extent (because the conduct did not concern tax), harmed the standing of the profession and the CIOT.
24. The Tribunal found charges 2.1 – 2.2 proved on the basis of Ms Watson's admissions and the fact that the Review Committee's decision was in the bundle. The Tribunal found charge 2.3 proved on the same basis as charge 1.4 above.
25. The Tribunal found charges 3.1 and 3.2 proved on the basis of Ms Watson's admissions and the complaint from the CIOT dated 9 February 2022. The Tribunal found charge 3.3. (as amended) proved on the basis of Ms Watson's admissions, plus the decisions of the two ICAEW committees which were in the bundle.
26. Having found all of the charges proved, the Tribunal moved on to consider sanctions.

SANCTION

27. It was confirmed that there were no previous disciplinary findings against Ms Watson.

28. The Tribunal considered the aggravating factors to be the persistent lack of improvement in relation to the failings identified by ICAEW and the serious nature of the sanctions imposed by ICAEW's committees. The Tribunal found that Ms Watson was not as forthcoming as she should have been when disclosing the regulatory findings of ICAEW to the CIOT and felt that Ms Watson had downplayed the level of seriousness.

29. Ms Watson had provided written submissions which are summarised as follows.

- In relation to failing to notify the CIOT of the regulatory action within the required 2 months (charge 3), Ms Watson stated that the response in the (earlier) 2020 annual return, submitted to CIOT on 17 January 2021 was part of the same disciplinary process which led to the withdrawal of her responsible individual registration later that year. She had misinterpreted the response from CIOT and had mistakenly thought that, because audit and taxation were distinct elements of her work, the CIOT did not require any further information about the audit disciplinary action by ICAEW. She now realised that she was mistaken. There was no intention to mislead. In the next annual return she answered truthfully.
- In relation to the quality of the audit work, she does not accept that the "strictures" from ICAEW were not taken seriously. An audit manager was appointed in 2014 and the firm was of the opinion that the audit work was improving. DSM has ceased to do audits. She does not believe that any audit clients suffered financial loss as a consequence. DSM maintains good relationships with previous audit clients and does work for them in other areas. Therefore, whilst the conduct may be unbecoming within the rules, it is not accepted that removal of RI status has harmed the CIOT.
- DSM had a general practice visit from ICAEW in 2018 which was satisfactory. She follows the PRPG and other professional rules such as confidentiality.

30. The Tribunal found the following mitigating factors. It was noted that an audit manager had been appointed and that Ms Watson and her firm genuinely believed that the audit work was improving. They had ceased to do audit work and were not seeking to do so in future. The Tribunal also gave Ms Watson credit for the fact that after she had reported the first ICAEW regulatory finding to the CIOT in her annual return, the CIOT had responded stating:

“Thank you for submitting your AML return for 2020/21 in which you refer to an ICAEW disciplinary relating to audit files. Please note that you will not need to include details of this event in subsequent annual returns.”

31. The Tribunal noted that the CIOT had stated that their policy at the time was that *“where a member has notified the CIOT/ATT within the time limits about disciplinary action taken by another professional body, then ordinarily only cases where the sanction imposed by the other body is expulsion or suspension should be referred.”* The CIOT went on to state that *“The member had more or less met the 2-month time limit (allowing for Christmas holidays) and as such no further action was required”*. The Tribunal accepted Ms Watson’s submission that this may have led to some confusion about future reporting requirements and, of course, Ms Watson did report via her annual returns. The Tribunal accepted Ms Watson’s submission that there was no intent to deceive or mislead. The Tribunal also gave her credit for her engagement with the TDB, and her candour. Finally, the Tribunal noted that some considerable time had elapsed since the breaches.
32. The Tribunal considered the Indicative Sanctions Guidance (‘ISG’) and assessed the different sanctions in ascending order of seriousness. The Tribunal was of the view that taking no further action or allowing the matter to rest on the file was disproportionate to the seriousness of the charges. The Tribunal also took the view that a warning was not appropriate because the misconduct was more than minor. An apology was clearly not appropriate in the circumstances. The Tribunal decided that a censure (to remain on the TDB’s public record for the standard period of three years) was the most appropriate sanction as the misconduct was of a serious nature, but not so serious as to merit a suspension. Ms Watson had indicated that her firm no longer undertook audit work so there was no risk to the public and the Tribunal was satisfied that the misconduct was unlikely to be repeated. A fine would be disproportionate and was not in the public interest.

COSTS AND PUBLICATION

33. With regard to costs, there were no exceptional circumstances which would mean that the TDB’s costs should not be payable by Ms Watson. The amount claimed by the TDB was reasonable. Ms Watson had not submitted any information about her personal financial circumstances.
34. The Tribunal therefore ordered that Ms Watson should pay £2,755.00 in costs to the TDB.
35. With regard to publication, the Tribunal noted that ordinarily any disciplinary finding or order made against a member will be published in accordance with Regulation 28. The Tribunal saw no reason to interfere with this.

EFFECTIVE DATE

36. This decision will take effect in accordance with Regulations 20.9 and 21.1 of the Taxation Disciplinary Scheme Regulations 2014 (as amended).

Simon Barnes

(Chair)

19 December 2023