

IN THE DISCIPLINARY TRIBUNAL OF
THE TAXATION DISCIPLINARY BOARD

Ref: TDB/2022/44

THE TAXATION DISCIPLINARY BOARD

– and –

JAMES CLIFFORD
(CIOT Membership No. 137717)

DECISION AND REASONS

Date of Hearing 14 February 2024
Venue. Virtual using Microsoft Teams

Tribunal Members:

Legally Qualified Chair	Jacqueline Findlay
Professional Member	Abdul Nabi
Lay Member	Angela Brown

Tribunal Clerk Nigel Bremner

Presenter Joe O’Leary, Counsel

James Clifford Not present and not represented

Background

1. Mr Clifford is a member of the Chartered Institute of Taxation (“CIOT”).
2. Mr Clifford was working as a sole practitioner alongside his employment and failed to have in place AML supervision and Professional Indemnity Insurance (“PII”). This relates to a period of at least 15 years prior to Mr Clifford’s notification to CIOT that he was carrying out these services.
3. Mr Clifford accepts that he has not complied with the requirements.
4. Registration for AML supervision was introduced in around 2007 and Mr Clifford became a member of CIOT in January 1995.

Evidence

5. The Tribunal had regard to the bundle of 49 pages and the On Table papers of two emails from Mr Clifford of 7 and 12 February 2024, email exchanges with TDB and the draft Costs Schedule (6 pages). This evidence included but was not limited to:
 - a. Correspondence between CIOT and TDB.
 - b. Correspondence between TDB and Mr Clifford (letters and emails).
 - c. Mr Clifford’s Response.

Procedure

6. The Tribunal considered the provisions of Regulation 14 of the Taxation Disciplinary Board Scheme Regulations 2014, as amended, (“the Regulations”).
7. 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 Clifford the required information in a letter dated 15 January 2024 which appears at pages 42 and 43 of the bundle.
8. The Tribunal was satisfied that the requirement for Mr Clifford to be given notice of 28 days of today’s proceedings had been complied with and the proof of service appears at page 44.
9. The Tribunal was satisfied that the requirements of Regulation 31.3 had been complied with in relation to service.
10. Mr O’Leary submitted that the Tribunal should have regard to the principles in the cases of *R v Jones* [2002] UKHL 5 and in the regulatory context *General Medical Council v Adeogba* [2016] EWCA Civ 162 when considering whether to proceed in the absence of Mr Clifford.
11. The Tribunal decided it should exercise its discretion to proceed in Mr Clifford’s absence. In reaching its decision the Tribunal took into account that Mr Clifford stated in his email dated 7 February 2024 he did not wish to attend. Further, it is unlikely that he would attend on any future occasion, he has been given the opportunity to attend and has chosen not to do so, he has made an informed decision, there is adequate evidence to determine the appeal, he has been given ample opportunity to make representations on all the evidence before the Tribunal and an adjournment would unnecessarily increase the costs.

12. Charges

Charge 1 - Failure to maintain Professional Indemnity Insurance (PII)

- 1.1 Mr Clifford notified the CIOT on 20 September 2022 that for at least 15 years he had been providing taxation services as a sole trader alongside his employment.
- 1.2 As a CIOT Member in practice, Mr Clifford was required by the CIOT PII Regulations to have PII to cover the period over which he was providing taxation services.
- 1.3 Mr Clifford did not have PII in place whilst providing such services.
- 1.4 By virtue of the foregoing, Mr Clifford is in breach of;
 - (a) Rule 2.7.1 of the PRPG 2018; and/or
 - (b) Rules 2.7.1 of the PRPG 2011; and/or
 - (c) Rules 2.12.1 of the PRPG 2006.

Charge 2. - Breach of Anti-Money Laundering (AML) registration requirements

- 2.1 The PRPG and the CIOT Anti-Money Laundering Scheme Rules 2017 require members to register for AML supervision.
- 2.2 Mr Clifford, while providing the services referred to in Charge 1.1, was not registered for AML supervision as so required.
- 2.3 By virtue of the foregoing, Mr Clifford is in breach of;
 - (a) Rule 2.10.2 of the PRPG 2018; and/or
 - (b) Rule 7.6.2 of the PRPG 2011; and/or
 - (c) Rules 2.8.1 and 7.6.1 of the PRPG 2006

Decision on the Charges

13. In reaching its decision on the facts, the Tribunal has borne in mind that the burden of proving the facts rests on the TDB and it is for the TDB to prove the charges. The charges can only be found proved if the Tribunal is satisfied, to the civil standard, on the balance of probabilities.
14. The Tribunal found on the basis of the evidence and Mr Clifford's admissions that the Charges are proved.
15. The Charges refer to the Rules of the Professional Rules and Practice Guidelines 2018, amended in 2021 (the "PRPG 2018"), the PRPG 2011 and PRPG 2006 of the Chartered Institute of Taxation ("the CIOT") and the Association of Taxation Technicians ("the ATT"). and the Regulations.
16. The Tribunal found that at all material dates when providing taxation services to clients he satisfied the definition of a 'Member in Practice' as defined in the PRPGs 2006, 2011 and 2018.
17. The Tribunal found that Mr Clifford notified the CIOT on 20 September 2022 that for at least 15 years he had been providing taxation services as a sole trader alongside his employment without AML supervision and PII in place.
18. The Tribunal found that as a CIOT Member in Practice, Mr Clifford was required by the CIOT PII Regulations to have PII to cover the period over which he was providing taxation services.
19. The Tribunal found that Mr Clifford was in breach of the following because he did not have PII in place while providing taxation services as a sole practitioner:
 - (a) Rule 2.7.1 of the PRPG 2018; and/or

(b) Rules 2.7.1 of the PRPG 2011; and/or

(c) Rules 2.12.1 of the PRPG 2006

20. The Tribunal found that Mr Clifford was in breach of the Anti-Money Laundering (AML) registration requirements. The PRPG and the CIOT Anti-Money Laundering Scheme Rules 2017 require members to register for AML supervision.
21. The Tribunal found that Mr Clifford was not registered for AML supervision as so required and was in breach of the following:
 - (a) Rule 2.10.2 of the PRPG 2018; and/or
 - (b) Rule 7.6.2 of the PRPG 2011; and/or
 - (c) Rules 2.8.1 and 7.6.1 of the PRPG 2006.
22. The Tribunal found that registration for AML registration was brought in around 2007. Mr Clifford became a member of CIOT in January 1995.
23. The Tribunal found that Mr Clifford admitted that he did not comply with the requirements.

Sanction

24. Having found the charges proved in relation to Mr Clifford, the Tribunal decided in accordance with Regulation 20.6 what action, if any, it should take. It was confirmed that there were no previous disciplinary findings against Mr Clifford.
25. 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 ISG”) 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.

26. 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’*.
27. The Tribunal considered the aggravating and mitigating factors in making its decision. The Tribunal considered the context of the breaches and the mitigating factors put forward by Mr Clifford and summarised as follows:
- He admits that he does not appear to have been fully compliant with his obligations and the requirements set out by CIOT although would not consider himself to be acting as a self-employed practitioner.
 - He apologises and will accept any sanction imposed.
 - He started to act for four clients, all now in their 70’s, some thirty years ago whilst a tax manager in an accountancy firm and due to the personal relationship, they asked if he could still deal with them in a personal capacity. He has been acting for them for 15 years. They asked him to prepare their personal tax returns and he agreed given their long-standing relationship.
 - He always utilised HMRC's Self-Assessment software partly because it was simple to use and, also, to keep the costs to a minimum.
 - The tax affairs of the four clients have always been relatively simple and his task has been to take care of their tax compliance for them e.g. a mixture of self-employment income, pensions, investments and rental income.

- For the last few years, he has charged no more than £1000 in total per annum i.e. below the income tax exempt limit for casual earnings. This modest amount was a reflection of the long-standing relationship and the relative simplicity of their affairs.
- HMRC wrote to him last year in connection with AML requirements which is why he contacted the CIOT for guidance.
- He continues to assist the four individuals with their tax affairs on a pro bono basis.
- He asks that consideration is given to the fact that he was on garden leave from his work following a restructure and looking for alternative employment.

28. The Tribunal found there were limited mitigating factors in respect of the Charges proved. The Tribunal took into account that Mr Clifford had admitted the breaches and accepted that he had failed to keep up with the legislation and had failed to keep himself informed. He had acted for only four clients whom he had known and acted for over many years and his earnings from the work was very modest. The Tribunal took into account that there was no loss to any client, Mr Clifford had a good history, and the failures were not deliberate.
29. The Tribunal found there were aggravating factors in that the breaches occurred over a protracted period of time: in his 2021 annual return and his 2019 annual return Mr Clifford only referred to his employment and not this self-employment and he did not submit annual returns for 2018 and 2020.
30. The Tribunal considered the 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 was of the view that a warning was not appropriate because the misconduct was more than minor. An apology was clearly not appropriate in the circumstances.

31. 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 or expulsion. The Tribunal has borne in mind that failing to inform a regulatory body undermines the purpose of the Regulations which is to protect the public, uphold standards and maintain confidence in the profession, and the breaches were a serious departure from the relevant professional standards. The Tribunal took into account that no client had suffered any loss, Mr Clifford has apologised but shown little understanding or appreciation of the seriousness of his actions or the consequences. The Tribunal was of the view that the misconduct was unlikely to be repeated.

Costs

32. The Tribunal had regard to Annex C of the ISG 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.
33. 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 found no exceptional circumstances. The Tribunal considered the schedule and considered that the costs outlined were proportionately and reasonably incurred. The Tribunal noted that Mr Clifford 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 Clifford and he had not submitted any documentary evidence to demonstrate his financial circumstances.
34. The Tribunal ordered that Mr Clifford should pay £2,350 in costs to the TDB.

Publication

35. The Tribunal noted the contents of Annex B of the ISG on the publication of disciplinary and appeal findings and Regulation 28.
36. 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.
37. 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.
38. 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 ISG.

Effective Date

39. This decision will take effect in accordance with Regulations 20.9 and 20.10 of the Regulations.

Jacqueline Findlay

Chair, Disciplinary Tribunal

14 February 2024