

IN THE DISCIPLINARY TRIBUNAL OF THE
TAXATION DISCIPLINARY BOARD

Ref: TDB/2023/0

THE TAXATION DISCIPLINARY BOARD

– and –

MARTIN SMITH

(ATT Membership No. 137420)

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
Taxation Disciplinary Board (“TDB”)	Represented by Joe O’Leary, Counsel
Martin Smith	Not present and not represented

Background

1. Mr Smith is a member of the Association of Taxation Technicians (“ATT”).
Mr Smith commenced trading on 1 February 2020 and he has had Professional Indemnity Insurance (“PII”) in place since 28 October 2022.
2. In the Annual Membership Returns for 2020 and 2021 it is asserted that Mr Smith indicated he had PII.
3. The 2020 and 2021 Annual Membership Returns referred to Mr Smith being AML supervised by ATT. The 2020 Return was signed off by the ATT when checks were done but it was not clear why. Mr Smith was contacted in relation to the 2021 Return and the AML supervision was queried but no response was received.

Evidence

4. The Tribunal had regard to the bundle of 46 pages and the On Table papers of Mr Smith’s written submission of two pages, his emails of 19/1/24, 25/1/24 and 12/2/24.

This evidence included but was not limited to:

Correspondence between ATT and TDB.

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

Mr Smith’s Response.

Procedure

5. The Tribunal considered the provisions of Regulation 14 of the Taxation Disciplinary Board Scheme Regulations 2014, as amended, (“the Regulations”).
6. 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 Smith the required information in a letter dated 15 January 2024 which appears at pages 35 and 36 of the bundle.
7. The Tribunal was satisfied that the requirement for Mr Smith to be given notice of 28 days of today’s proceedings had been complied with and the proof of service appears at page 37 of the bundle.

8. The Tribunal was satisfied that the requirements of Regulation 31.3 had been complied with in relation to service.
9. 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 Smith.
10. The Tribunal decided it should exercise its discretion to proceed in Mr Smith's absence. In reaching its decision the Tribunal took into account that Mr Smith stated in his Response Form (pages 43 and 44) and in the attachment to his email of 12 February 2024 that he would not be attending. 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.
11. The Tribunal was satisfied that Mr Smith had been given every opportunity to facilitate his attendance and has chosen not to attend. Mr Smith was offered assistance in joining the hearing remotely by Mr Bremner in his email of 26 January 2024 (page 45).

Charges

12. Charge 1 - Failure to maintain Professional Indemnity Insurance ("PII")
 - 1.1 From on or around 1 February 2020 Mr Smith having retired from full time practice, continued to provide taxation services.
 - 1.2 As an ATT Member in Practice, Mr Smith was required by the PRPG and the ATT PII Regulations to have PII to cover the period over which he was providing taxation services.
 - 1.3 Mr Smith submitted annual returns to the ATT for the years 2020 and 2021 which failed to declare that he did not have PII in place.
 - 1.4 Mr Smith did not have PII in place whilst providing taxation services between on or around 1 February 2020 and 28 October 2022.
 - 1.5 By virtue of the foregoing, Mr Smith is in breach of Rules 2.2.1 and/or 2.7.1 of the PRPG 2018.

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

- 2.1 The PRPG and the ATT Anti-Money Laundering Scheme Rules 2017 require members to register for AML supervision.
- 2.2 Mr Smith submitted Annual Returns to the ATT for the years 2020 and 2021 which declared that he was registered for AML supervision with ATT when he was not.
- 2.3 Mr Smith did not register for AML supervision until early 2023 and was not registered for AML supervision for the years 2020 and 2021.

By virtue of the foregoing, Mr Smith is in breach of Rules 2.2.1 and/or 2.10.2 of the PRPG 2018.

Decision on the Charges

13. The charges refer to the Rules of the Professional Rules and Practice Guidelines 2018 of the COIT and the Association of Taxation Technicians ("ATT") (the "PRPG 2018") (amended 2021).
14. 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.
15. The Tribunal found on the basis of the evidence and Mr Smith's admissions that the Charges are proved save for the charge in relation to Rule 2.2.1.
16. Rule 2.2.1 states as follows:

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.

17. Mr O'Leary submitted that the Tribunal should consider that, at the very least, Mr Smith recklessly supplied information or omitted information in his 2020 and 2021 Annual Membership Returns (pages 15 and 16) which was false or misleading. He submitted that in the 2020 and 2021 Annual Membership Returns he indicated that he answered 'yes' to having PII and the Returns referred to Mr Smith being AML supervised by ATT.

18. The Tribunal found that page 15 was not a copy of the actual Annual Return of 2020. As explained by Alexandra Melrose, Professional Standards Admin Assistant of ATT, in the email of 15 January 2024 (page 18), the answers from the Annual Return were exported to Excel due to the ‘system’ in place at the time. The Tribunal was unable to attach weight to this evidence as it was not clear what the questions were on the Annual Return to prompt the recorded responses on which TDB rely as evidence of a breach of Rule 2.2.1 and not having the full Returns the Tribunal was unable to consider the context of the answers.
19. For example, it was recorded that “Member indicated that they do NOT have PII (Sole Practitioner).” If Mr Smith stated that he did not have PII it could not be said that he “knowingly or recklessly” supplied information” or made “any statement which is false or misleading.”
20. For example, it was recorded “Member indicated that they do NOT conduct their work in accordance with the standards set out in Professional Conduct in Relation to Taxation(PCRT).” Without precise details of the questions asked the Tribunal was not persuaded that this statement was sufficient to establish that he “knowingly or recklessly” supplied information or made “any statement which is false or misleading.”
21. For example, as only a summary of the 2021 Annual Return has been filed (page 16), the Tribunal was not persuaded without the context that the answer “ATT” to the questions “Please select your AMLS Supervisor (Sole Practitioner)” could amount to a breach of Rule 2.2.1
22. The Tribunal found that at all material dates when providing taxation services to clients Mr Smith satisfied the definition of a ‘Member in Practice’ as defined.
23. The Tribunal found, on the basis of Mr Smith’s admissions, that the breaches commenced in 2020 and 2021 and the breaches of the PRPG 2018 (updated 2021) and earlier versions were as follows:
 - 2.7.1 *A member in practice must protect their clients, their practice and themselves by having PII cover that complies with the CIOT/ATT PII Regulations (see the CIOT and ATT websites) as they have a duty of care to their clients when carrying out their professional work. A member is responsible for their own work and that of their employees and subcontractors. A member may be liable to pay*

damages for loss caused by their own professional negligence and that of their employees and subcontractors.

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.

2.10.2 A member in practice must either be registered with the CIOT or ATT for AML supervision or, if requested, advise the CIOT and ATT of their Supervisory Authority under The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Sanction

24. Having found the charges proved, other than a breach of Rule 2.2.1, the Tribunal decided in accordance with Regulation 20.6 what action, if any, it should take.
25. It was confirmed that there were no previous disciplinary findings against Mr Smith.
26. 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.
27. 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*'.
28. The Tribunal considered the aggravating and mitigating factors in making its decision. The Tribunal considered the mitigating factors put forward by Mr Smith and summarised as follows:
 - He took early retirement from full time employment in late 2019 mainly due to health issues. Over the following months he was approached by a few long-

term friends and family members who asked if he would be interested in completing their Tax Returns. In February 2020 he started doing this work and received a very modest income. He prepared a small number of Tax Returns and the work was compliance based which was his career as an employee.

- Part of his misunderstanding was because his earnings were below the Tax threshold and he thought there would be a similar de minimum monetary limit for AML and PII purposes.
 - He misunderstood the AML supervision provisions and did not realise that it was an additional service that carried an additional cost.
 - He understood that if he had an issue around money laundering he would approach ATT for help and guidance as a member as this was all part of his membership.
 - As soon as he became aware of his error, he contacted ATT to rectify the situation.
 - He is now up to date and fully aware of his obligations going forward.
 - He made a genuine mistake for which he apologises.
 - Having not been directly involved with the money laundering procedures before this has been a steep learning curve for him.
 - He genuinely misinterpreted what 'supervision' actually involved.
29. The Tribunal has 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.
30. 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. 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 Mr Smith has apologised and explained that the breaches were due to a genuine misunderstanding. The Tribunal was of the view that the misconduct was unlikely to be repeated.

31. In reaching this decision the Tribunal took into account that although there was no loss to any clients, the breaches were a serious departure from the relevant professional standards and Mr Smith had shown that he had an 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 found that the costs schedule was sent to Mr Smith by email on 26 January 2024 (pages 45 and 46).
33. 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.
34. 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 Mr Smith's representation about costs summarised as follows:
 - He has not challenged the charges and has been very open and honest in stating that he made a genuine error and misinterpreted the AML supervision rules for which he sought help and guidance from the ATT as soon as the error was brought to his notice.
 - He is shocked at the level of costs.
 - His total gross income is only in the region of £8,000.
 - The work he did in preparing Tax Returns and ensuring compliance was very low risk.
 - He has paid £780 for the arrears of AML supervision and is required to pay a further £350 in May.

- He has an annual subscription of about £250 to pay to ATT.
 - All these expenses are a very high percentage of his total income and the level of the costs seems very harsh. If he was earning £50,000 or £100,000 the costs would be the same and this is not fair.
 - He has been extremely distressed by the position he has found himself in over this matter and it has had a profound effect on his health.
 - He is shocked and disappointed. When he first contacted Jane Mellor of the ATT and she was fully aware that he was in a panic over this she told him: “don’t worry, we will get you sorted.”
 - He never envisaged he would end up in front of a Tribunal and this is the first time he has approached the ATT in 32 years for help. He thought the ATT was there to provide support to its members and his has not been his experience.
 - He had to leave full-time employment due to health issues and his income has been severely diminished as a consequence. The level of costs is nearly 30% of his total income due to a genuine mistake and this seems incredibly harsh.
35. The Tribunal was of the view that Mr Smith had been given the opportunity to produce documentary evidence of his financial circumstances and had chosen not to do so. Mr Smith in his submission refers to his total income and his gross income but has filed no documentary evidence in support of his assertions or about his financial means. In these circumstances the Tribunal was not persuaded that he had an inability to pay the costs. The other matters put forward by Mr Smith are not relevant to the level of the costs claimed. The Tribunal found no exceptional circumstances.
36. The Tribunal was of the view that the costs of £2,350 were relevant to this case and would not have been incurred save for his own failings and actions.
37. The Tribunal decided that Mr Smith should pay £2,350 in costs to the TDB.

Publication

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

39. 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.
40. 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 or redaction of this decision.
41. 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

42. 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