

IN THE MATTER OF THE TAXATION DISCIPLINARY BOARD

Reference: TDB/2019/30

THE TAXATION DISCIPLINARY BOARD

– and –

**MR DILIP DHIRUBHAI PATEL
(CIOT Membership Number 135559)**

Date of Hearing	27 March 2024
Venue	Virtual using Microsoft Teams
Tribunal Members	
Legally Qualified Chair	Jacqueline Findlay
Professional Member	Janet Wilkins
Lay Member	Amran Hussain
Tribunal Clerk	Nigel Bremner
Taxation Disciplinary Board (“TDB”)	Represented by Joe O’Leary, Counsel
Mr Dilip Patel	Present and not represented
Observer	Sam Gardiner

DECISION AND REASONS

Background

1. Mr Patel is a member of the Chartered Institute of Taxation (the “CIOT”).
2. On 4 January 2023 the Investigation Committee (“IC”) of the Institute of Chartered Accountants in England and Wales (“ICAEW”) with the agreement of Mr Patel made an order that:

Mr D Patel TDB/2019/30

- Mr Patel be severely reprimanded.
 - Mr Patel be fined £10,000.
 - Mr Patel pay costs of £6,190.
3. Mr Patel failed to notify the Head of Professional Standards at CIOT within 2 months of 4 January 2023 of the regulatory action referred to above having been upheld against him by another professional body to which he belonged.

Evidence

4. The Tribunal had regard to the bundle of 35 pages and the On Table papers of 6 pages.
- This evidence included but was not limited to:
- Correspondence between the ICAEW and TDB.
- Correspondence between TDB and Mr Patel (letters and emails).
- Mr Patel's Response Form.
- Professional Rules and Practice Guidance 2018 as amended in 2021 (the PRPG").
- Taxation Disciplinary Scheme Regulations 2014 (the "Regulations").
- Guidance for Investigation Committee Panel Members
- Indicative Sanctions Guidance revised May 2023 (the "ISG").

Procedure

5. In accordance with regulations 18.1 of the Regulations the Charges were read out. Mr Patel admitted Charge 1.1 and Charge 2. He denied Charges 1.2 and 1.3.
6. The Tribunal was satisfied that the requirements of regulation 14 of the Regulations had been met and Mr Patel confirmed he was content to proceed with the hearing without representation and by MS Teams. The Tribunal found no injustice in so doing because Mr Patel was clearly intelligent and able to present his case.

7. The Tribunal heard a submission from Mr O’Leary and oral evidence from Mr Patel.
8. The Charges set out below make reference to the PRPG.

2.6.3 (Professional behaviour)

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.

2.14.2 (Notification to the CIOT)

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;

Charge 1

1.1 On 4 January 2023 the IC of ICAEW, with the agreement of the Defendant made an order that:

- i. The Defendant be severely reprimanded,
- ii. The Defendant be fined £10,000,
- iii. The Defendant pay costs of £6,190.

1.2 The IC of the ICAEW made the order referred to above with respect to a complaint that:

Between the 31 January 2015 and the 11 October 2016, the Defendant, as a Director of “X” Limited, failed to exercise reasonable care skill and diligence, in breach of s174 of the Companies Act 2006 (General Duties of Directors) by allowing “X” Limited to not declare output tax of £18,000 in its VAT return for

the quarter ending 31 January 2015, or at all, on an invoice dated 31 December 2014, for the sale of intellectual property to a connected party.

1.3 By virtue of the disciplinary and/or regulatory action taken by ICAEW's IC in relation to the Defendant referred to in Charges 1.1 and/or 1.2 above, the Defendant has conducted himself in an unbecoming manner which tends to bring discredit upon himself 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 The Defendant failed to notify the Head of Professional Standards at CIOT within 2 months of 4 January 2023 of the regulatory action referred to in Charge 1.1 having been upheld against him by another professional body, namely the ICAEW, to which he belonged contrary to rule 2.14.2.

Decision on the Charges

9. The Tribunal found that on 4 January 2023 the IC of the ICAEW with the agreement of Mr Patel made an order as set out on page 10. The Tribunal found Charge 1.1 proved. Mr Patel has admitted this on the facts and this Charge is not in dispute.
10. The Tribunal found that the IC of the ICAEW made the order with respect to a complaint as set out in paragraph 7 above (page 10). The Tribunal found that Charge 1.2 is proved.
11. The Tribunal found that Charge 1.3 is proved. The Tribunal found by virtue of the disciplinary and regulatory action taken by ICAEW's IC Mr Patel has conducted himself in an unbecoming manner which tends to bring discredit upon himself and may harm the standing of the profession and CIOT contrary to rule 2.6.3 of the PRPG. It does not assist Mr Patel that he wished he had not agreed to the order and he believes the facts behind the imposition of the order are incorrect. The fact

that Mr Patel agreed to the order and it was made is sufficient for the purposes of our findings.

12. In reaching its decision the Tribunal has borne in mind that the strict rules of evidence do not apply (regulation 30.4) and the finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a copy of the finding and penalty (regulation 30.5(b)). The ICAEW has produced a copy of the order of 4 January 2023 (page 10).
13. The Tribunal has borne in mind that in respect of any Complaint to which regulation 30.5 is relevant, the findings of fact by the court or tribunal upon which the conviction, finding, penalty or judgment is based shall be admitted as prima facie evidence of those facts (regulation 30.6).
14. The Tribunal found that Charge 2 is proved. The Tribunal found that Mr Patel failed to notify the Head of Professional Standards at CIOT within 2 months of 4 January 2023 of the regulatory action referred to in paragraphs 2 and 8 above having been upheld against him by ICAEW, another professional body, to which he belonged. Mr Patel admitted this Charge which is not in issue. The Tribunal found that Mr Patel breached rule 2.14.2 of PRPG.
15. In reaching its decision the Tribunal has borne in mind that the burden of proof is on the TDB (regulation 20.3) and the standard of proof is the civil standard, on the balance of probabilities (regulation 20.4).
16. It is Mr Patel's view and that of Mr Longley, in support, that the assessment issued by HMRC against Assets Limited was incorrect. Mr Patel submits that there should have been no VAT assessment and there cannot be a default where there is no breach of the VAT rules and regulations.
17. Mr Patel submits that HMRC was at fault in that it assumed that the transaction was an ordinary disposal of a VATable item and HMRC did not query the position further as to whether this was a TOGC.

18. Mr Patel submitted that HMRC were not out of pocket.
19. In oral evidence Mr Patel submitted that no one had said anything about the ICAEW's order and did not accept that this could not bring discredit on himself or the profession.
20. The Tribunal have considered the submissions of Mr Patel, however, it is not the role of the Tribunal to go behind the order of the IC of the ICAEW. If Mr Patel did not agree with the order this was something he should pursue with ICAEW. If he did not agree with the actions of HMRC this was something for Mr Patel to pursue with HMRC.

Sanction

21. Having found the charges proved, the Tribunal decided in accordance with Regulation 20.6 what action, if any, it should take.
22. It was confirmed that there were no previous disciplinary findings against Mr Patel.
23. In deciding on the appropriate sanction, the Tribunal considered the guidance contained in the TDB's Indicative Sanctions Guidance. 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.
24. 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'*.

25. The Tribunal considered the aggravating and mitigating factors in making its decision. The Tribunal considered the mitigating factors put forward by Mr Patel and summarised as follows:

- He apologises for not notifying CIOT which was an oversight. This has never happened in the past. In future he will be more careful.
- He accepted the decision of ICAEW due to his wife's health and lots of tensions at the time and he regrets doing it.
- The facts are incorrect and do not constitute a disciplinary offence. None of his actions are potential breaches of the PRPG. He has committed no offence.
- His actions have not affected any practice client or member of the public,
- X limited did file the VAT return correctly as it re-issued the invoice in question without VAT on the strength of Transfer of a Going Concern VAT Regulations.
- HMRC raised an assessment to the wrong company and had this been done correctly he would not be in this situation.
- Before making a refund he is not sure why HMRC did not do a check/validity of the claim of the company of which he has never been a Director, employee or shareholder.
- He first became aware of the HMRC VAT assessment on 10 December 2019 and not in October 2019.
- The VAT assessment and penalty notice were not received by Assets and HMRC sent no reminders.
- As he found out about the assessment on 10 December 2019 and that the assessment and penalties were being paid to HMRC via a full funded CVA it was decided at this late stage that an appeal would not be accepted by HMRC so none was made.
- He believes that he advised on all relevant matters on a timely basis.
- He seeks to rely on the letter of Mr Eric Longley, Director of Taxation, Whitemoor Davis, dated 1 April 2022 (pages 21 and 22).
- The VAT returns filed by Assets were all complete and correct and HMRC raised an assessment on the wrong company.
- All Assets VAT returns have been filed and paid on time since January 2016.

- He does not believe this constitutes a disciplinary offence as there was no “unbefitting manner which bring discredit on himself and/or may harm the standing of the profession.”
 - This was an isolated incident which happened many years ago and HMRC was fully paid with interest and penalties under a fully funded CVA £1 for £1 within 4 years of a 5-year plan agreed and there was no loss to anyone.
 - Throughout his membership he has not committed any breaches and he would like to keep his history clean.
 - As the information has been received from ICAEW he hopes the costs and penalties can be mitigated accordingly.
 - He would like to bring this matter to a swift conclusion and continue professional membership.
 - He highlights that the ISG suggests a warning is appropriate for a failure to inform of a consent order which is an administrative failure.
26. Mr Longley in the letter dated 1 April 2022 explained that the company Assets Limited, an incorporated entity regulated by ICAEW, agreed to dispose of certain intellectual property to another company, Licensed Trade Stocktaking Limited (“LTSL”) which is not a regulated incorporated entity or is required to be regulated.
27. An invoice was raised by Assets Limited on 31 December 2014 for VAT of £18,000 relating to the transfer of intellectual property from Assets Limited to LTSL. Mr Longley asserted that it was Mr Patel’s Co-Director, Mr Wilson, who obtained the advice that the transfer of the intellectual property amounted to a transfer of a going concern (“TOGC”). The TOGC rules are compulsory and are not optional. Where the sale meets the condition of the TOGC rules the supply is outside the scope of VAT and VAT is not chargeable. The invoice of 31 December 2014 was reissued with no VAT.
28. The Tribunal considered all the representations from Mr Patel and the information submitted from Mr Longley.

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.
31. In reaching its decision the Tribunal considered a censure to be appropriate because the misconduct is of a serious nature, there was no evidence of loss to a client, the misconduct was an isolated incident, Mr Patel has demonstrated some insight into his misconduct, he has expressed regret, he has a previous good history and there has been no repetition of the misconduct since the incident and the misconduct is unlikely to be repeated in the future.

Costs

32. The Tribunal found that the costs schedule was sent to Mr Patel attached to an email dated 25 March 2024 from TDB (On Table pages).
33. The Tribunal had regard to Annex C of the ISG in relation to the powers to award costs and regulation 20.7(g) in dealing with a Defendant against whom a charge has been proved. There is a presumption that an unsuccessful Defendant should pay costs 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 discretion must be exercised in accordance with the principles of reason and justice and in line with the principle that 'the polluter pays.' The general principle requires 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.
35. The Tribunal found no exceptional circumstances.
36. Mr Patel told the Tribunal that there would be no effect on him of an order for costs of £2,506.
37. The Tribunal was of the view that the costs of £2,506 were relevant to this case and would not have been incurred save for Mr Patel's own failings and actions.
38. The Tribunal decided that Mr Patel should pay £2,506 in costs to the TDB.

Publication

39. The Tribunal noted the contents of Annex B of the ISG on the publication of disciplinary and appeal findings and regulation 28.
40. 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.
41. 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

Mr D Patel TDB/2019/30

not be published. The Tribunal did not find any circumstances that would justify an order for no publicity or redaction of this decision.

42. The Tribunal ordered that, in accordance with regulation 28.1, this order and these findings should be published as soon as practicable and this Decision and Reasons shall remain on the TDB website for a minimum period of 3 years in accordance with Annex B of the ISG.

Effective Date

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

Jacqueline Findlay
Chair, Disciplinary Tribunal
27 March 2024