

HEARING ON 2 MAY 2024

B E T W E E N

TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR ALAN RODGERS
(CIOT membership No. 159355)

DECISION AND REASONS

Present:

Tanveer Rakhim (Chair, Lay member)

Amran Hussein (Lay member)

Shashi Sharma (Tax Panel member)

Nigel Bremner (Clerk to the TDB)

The Committee met via Microsoft Teams

INTRODUCTION

1. The Disciplinary Tribunal (‘the Tribunal’) sat on 2 May 2024 to hear charges brought by the Taxation Disciplinary Board (‘TDB’) against Mr Rodgers. The hearing was conducted remotely by video conferencing.
2. Mr Rodgers attended and was unrepresented. The TDB’s Case Presenter was Ms Sophia Kerridge.
3. Mr Rodgers faced the charges, as set out at Appendix 1, which incorporates the amendment (see preliminary issues below).

4. Mr Rodgers contested the charges.
5. The Tribunal was provided with the following documents:
 - a. Document index and schedule;
 - b. Case Summary and papers before the Investigation Committee:
 - Case summary
 - Complaint form/referral (15 September 2023)
 - Supporting documents (Mazars initial email to member)
 - Initial letter to member (enclosing complaint form and supporting documentation) (20 November 2023)
 - TDB request for further documents
 - Member Response supporting documents
 - c. Letter to Member re. IC decision;
 - d. Notice of hearing;
 - e. Letter from Member to TDB (21 March 2024);
 - f. Response Form (20 March 2024);
 - g. Email from TDB to member with draft costs schedule;
 - h. Email from member with mitigation (21 March 2024);
 - i. Cost schedule in the sum of £2,733.

BACKGROUND TO THE CHARGES

6. Mr Rodgers is registered with the CIOT.
7. Mr Rodgers' client has been involved in a large legal dispute. The Insolvency practitioners (Mr E Thomas at Mazars) attempted to gather information on a particular client for whom Mr Rodgers was acting and both had been liaising with each other from 22 March 2022. On 28 June 2022, Mr Thomas asked Mr Rodgers for the client's tax returns as Mr Rodgers had assisted in preparing these, as well as bank statements for the client and other information on investments by the client. Mr Rodgers complied with information requests that he felt he could without breaching his client's wishes. The Insolvency Practitioners complained about the lack of

information provided by Mr Rodgers, and that Mr Rodgers also failed to provide them with a copy of his organisation's complaints procedure.

8. Mr E Thomas, from Mazars, filed his complaint with the TDB on 15 September 2022. He states that Mazars requested the information on 28 June 2022 and Mr Rodgers replied on 30 June 2022 stating he was in a difficult situation as his client had reasons not to disclose these. Mazars chased this on 20 July 2022 and Mr Rodgers asked for more time as he had been on holiday. Mazars then requested the complaints procedure on 8 August 2022.
9. Mr Rodgers was sent an initial letter from the TDB on 20 November 2023, by email and post, to notify him of the complaint.
10. Mr Rodgers responded to the allegations by way of a letter dated 21 November 2023.
11. The TDB informed Mr Rodgers on 19 February 2024 that the Investigating Committee would refer the case to the Disciplinary Tribunal and he was sent the notice of hearing by email on 4 March 2024.
12. Mr Rodgers provided his Response Form dated 20 March 2024 and requested an oral hearing where he stated he would attend and be unrepresented. Mr Rodgers provided mitigation by email on 21 March 2024. He submitted that he had been practicing for 30 years without any complaints, he tried to do the best for his client, he believed he had reasonable commercial reasons to withhold certain information that would affect his client's case, his client's dispute is ongoing and his client has been advised to consider taking action against Mazars once the dispute is concluded.
13. The hearing was listed on 16 April 2024, but another hearing on the day overran and Mr Rodgers was not available after 15:30 as he had to leave for an appointment. In the circumstances, the Tribunal considered it fair and just to relist the matter, so that Mr Rodgers was not rushed. The matter was relisted on 2 May 2024, before the same Tribunal members.

PRELIMINARY ISSUES

Application to amend charge

14. The Case Presenter applied to amend the Schedule of Charges to substitute the month, from October to August in Charge 2.1. Mr Rodgers was in agreement with the amendment. The original charge read as follows:

'2.1 Following a request from his client's Trustee in Bankruptcy on 8 October 2022, the Defendant failed to produce his organisation's complaints procedure.'

15. The Tribunal noted Regulation 17.6 stated that; *'No objection shall be upheld due to any technical fault in the Charge or in the service of notice or documents on the Defendant or in the procedure of the Disciplinary Tribunal, provided that the Defendant is not unreasonably prejudiced thereby.'* The Panel noted the amendment was minor, it corrected an error on the date, the application was made at the outset of the hearing, the parties were in agreement with the amendment and no unfairness was caused as it was a minor amendment as opposed to a substantive change. The Tribunal allowed the amendment as it would allow the charge to be put more accurately to Mr Rodgers.

16. Paragraph 2.1 of Charge 2, as amended, now read as follows:

*'2.1 Following a request from his client's Trustee in Bankruptcy on 8 **August** 2022, the Defendant failed to produce his organisation's complaints procedure.'*

Privacy

17. Despite earlier indications, there was no application for any part of the hearing to proceed in private. The Tribunal was mindful that Mr Rodgers should be able to freely provide evidence and/or submissions, and that this may involve discussions in relation to commercially sensitive information. The Tribunal reminded the parties that they were able to make a privacy application if sensitive information was to be discussed. No such application was made during the hearing.

DECISION ON THE CHARGES

18. The relevant paragraphs from the Professional Rules and Practice Guidelines 2018 ('PRPG') are included at Appendix 2.

19. The Case Presenter provided the background and her submissions on the charges. After the break, Mr Rodgers provided oral evidence and was cross examined, before answering questions from the Panel. The Case Presenter then provided closing submissions first and was then followed by Mr Rodgers who provided brief submissions.

Charge 1

20. In his Response dated 20 March 2024, Mr Rodgers relied on his initial response to the TDB dated 21 November 2023. Within this, with respect to the failure to give the requested information, Mr Rodgers explains that he had been specifically asked by his client to not give the client's tax returns to the insolvency practitioners. Mr Rodgers therefore had to consider what information he felt was reasonable as he wished to avoid putting himself in a position where the client could take legal action against him if he provided information against the instruction of his client and then if that information was subsequently used as evidence in the legal dispute. Mr Rodgers accepts he received the initial letters from Mazars, which after discussion with the client and the client's solicitor, Mr Rodgers replied as fully as he felt able to do in the circumstances, providing all the information he felt he was able to do. The client's solicitor also suggested that the information requests were addressed incorrectly to Mr Rodgers and that instead it should have been addressed to the Company Directors.

21. After receiving Mr Rodger's response, on 14 December 2023 the TDB asked for evidence that the client, or the client's solicitor, had asked Mr Rodgers to not provide the requested information to Mazars. Mr Rodgers disclosed a series of emails of conversations between him, his client and his client's solicitor. However, the emails disclosed did not contain any advice to not share the requested information.

22. At the hearing, the Case Presenter submitted that the requested information had not been provided and Mazars' letter had referenced the relevant legislation under which the disclosure was required. It was also submitted that legal proceedings were

threatened and Mr Rodgers should have made himself aware of the statutory requirements.

23. Charges 1.1 and 1.2 related to the same material being requested over two different dates. There was no dispute that the requests were made on these dates. The Tribunal had sight of the letter dated 28 June 2022, which was emailed to Mr Rodgers on 30 June 2022. This letter outline Mazars' role including the statutory duties and stated that Mr Rodgers' client was reluctant to cooperate. It then sought the client's self assessment returns (Charge 1.1(a)) for a specified six year period and cited the legislation that is featured in Charge 1.3. The same letter also sought bank statements for the same period (Charge 1.1(b)) and queried if the client had made personal investments (Charge 1.1 (c)). Relevant details were provided in this detailed two-page letter in order to allow Mr Rodgers to fully understand the request. The Tribunal also had sight of the further email of 20 July 2022 where Mazars repeated the request (Charge 1.2) and requested a response within five days.

24. The Tribunal was thus satisfied that the information was requested as per Charges 1.1 (a-c) and 1.2 and these were found proved.

25. The remaining issue was whether Mr Rodgers had provided any of this information (Charge 1.3). There was no dispute that this information was not provided. Whilst Mr Rodgers has a duty to protect his client's interests, he also has a duty to comply with the legislation and he accepted in oral evidence that he did read the legislation. If any information/documents were not available then he should have informed Mazars of this. In the hearing, Mr Rodgers accepted he would have had access to computations of the tax returns from the start of the six-year period that was sought by Mazars. If he had the information/documents, then he should have provided this, but he had failed to do this. Accordingly, the Tribunal was satisfied that Charge 1.3 was proved.

26. The Tribunal thus found Charges 1.1(a), 1.1(b), 1.1(b), 1.2 and 1.3 proved.

Charge2

27. With respect to not providing the complaints procedure, in his initial response to the TDB dated 21 November 2023, Mr Rodgers is apologetic for not giving Mazars his firm's complaints procedure and suggests that he missed the request due to summer leave. However, he suggests that Mazars could have still filed a complaint with his organisation without requesting the procedure, as the procedure can be found on his firm's website. Mr Rodgers highlights that *"Mazars know how to make a complaint, clearly evidenced by the fact that they have done so"* to the ICAEW then subsequently to the TDB.
28. In his Response dated 20 March 2024, Mr Rodgers stated that at the relevant time the complaints procedure was available on his firm's website. He stated *"clearly this did not work"* and this will be reviewed if the issue arises again. He also submitted that he had never been asked to provide the complaints procedure before this occasion or since Mazars' request.
29. At the hearing, the Case Presenter submitted that Mr Rodgers had accepted that he did not respond to the request and a formal complaint did follow to the TDB. She submitted that whilst it may have been on the website, Mazars had asked for it and Mr Rodgers had failed to provide this.
30. In oral evidence, Mr Rodgers accepted partial responsibility saying that he could have provided the complaints procedure and should have sent this. However, he considered it reasonable that a professional firm like Mazars should have been able to find the complaints procedure on his firm's website. He stated that he had now removed the complaints procedure from the website and would provide this direct upon a request being received. He also provided details about the complaints process, escalation points and the managers involved.
31. The Tribunal was satisfied that Mr Rodgers had failed to provide the requested complaints procedure. He accepted this was the case and had changed his practice to ensure this was provided in the future.
32. The Tribunal found Charge 2 proved.

Charge 3

33. With respect to being in breach of Rules 2.2.1, 2.6.3 and 11.3.1, Mr Rodgers stated in his Response dated 20 March 2024 that he tried to explain his position in his initial response to the TDB dated 21 November 2023, and if the charge was established against him then he would deal with the consequences.
34. Charges 1 and 2 were proved in their entirety. Mr Rodgers said that he had sought advice from his client's solicitors, but he was unable to provide any evidence to indicate that he had been advised to not provide the requested information/documents. Whilst Mr Rodgers is correct that the client's directors could have provided the information, he overlooked his own duty to cooperate and provide the information/documents. In cross examination, he accepted that Mazars have to use methods available to them and that it is reasonable for them to seek information/documents via accountants.
35. The Tribunal was satisfied that the Respondent had failed to provide the requested information/documents. This caused a breach of Rule 2.2.1. Accordingly 3.1 (a) was found proved.
36. In the hearing, Mr Rodgers knew what the regulator expected of him and accepted that he failed to "*tick the boxes*" by failing to provide the information. It is noted that he thought the information should have been obtained from the client. He acknowledged that complaints procedure information should be provided, albeit he considered that its availability on the website at the time sufficed. Whilst his insight is developing and not complete, in terms of Rule 2.6.3 the Tribunal considered Mr Rodgers had fallen short by reason of his conduct. He did not appreciate the duties that he owed others or his statutory obligation. Whilst Mr Rodgers considered Mazars approach to be hostile, the Tribunal did not consider this to be the case when looking at all the correspondence within the bundle; in any case this would not excuse the non-compliance. Mr Rodgers' conduct was improper and he should have provided the information/documents and the complaints procedure. His conduct did discredit the CIOT and the tax profession. Accordingly 3.1 (b) was found proved.

37. Mr Rodgers accepted he should have kept file notes/records of the discussion with the client's solicitors, but had failed to do so in this case as it was a busy period at that time. Mr Rodgers should have sought independent legal advice and in the hearing accepted he could have contacted some organisation, such as a professional institute or a business support group, in terms of seeking advice. He accepted he had read the legislation but was unsure on the timing of this. Whilst his client did not agree to the disclosure, Mr Rodgers should have made further enquiries to satisfy himself that the request made, under statutory powers, was legally enforceable and had overridden his client's confidentiality. Accordingly 3.1 (c) was found proved.

SANCTION

38. In determining what, if any, sanction to impose, the Tribunal had regard to the Indicative Sanctions Guidance ('ISG').

39. The Tribunal bore in mind the purpose of a sanction is not to punish a member, albeit it may have that effect. The purpose is to promote the public interest which includes not only protecting the public but upholding the proper standards of conduct in the profession and maintaining its reputation.

40. Any sanction imposed by the Tribunal must be appropriate and proportionate; taking into account the member's own interests and should be the least onerous measure that adequately meets the facts of the charges found proved.

41. The Tribunal took into account Mr Rodgers's lack of previous disciplinary matters before this regulator.

42. The Case Presenter submitted that censure may be appropriate as a sanction, but stated that it was a matter for the Tribunal. She provided submissions with respect to the mitigating and aggravating factors.

43. Mr Rodgers submitted that he had not adopted an aggressive approach with Mazars and stated that he had expressed remorse. He also expressed his disappointment with the Tribunal's findings on the charges. He provided details of the complaints

procedure at his firm. If another such request for information/documents was received in the future, then he stated that he would initially try to ask for the request to be redirected and if the information/documents were still sought then he would take advice from the CIOT to ensure he did not fall foul of the legislation. Whilst he hoped for a warning, Mr Rodgers said that he would understand if a censure was found to be the appropriate sanction by the Tribunal.

44. The Tribunal took all the above matters into consideration. The Tribunal considered there were some aggravating factors present. There was no significant remorse shown and Mr Rodgers was in disagreement with the decision. He had limited insight and said he would initially try to deflect such requests to others instead of dealing with them. He had also failed to seek independent advice. He also minimised his failings on not providing the complaints procedure by saying that it was available online.

45. However, in mitigation, this was his first appearance before a regulator and there was no evidence of any further complaints. Mr Rodgers did indicate that if the information was still pursued then he would seek out guidance from the CIOT. The insolvency proceedings had not been affected, with a limited delay caused by Mr Rodger's failings, combined with his client's cooperation with Mazars. The Tribunal was also mindful of the pressure under which Mr Rodgers operated when faced with a client instructing him to not provide the requested information/documents. Mr Rodgers had also apologised for not sending the complaints procedure and had accepted he should have sent this.

46. The Tribunal was aware of relevant guidance in the ISG which included:

- a. *The role of the Tribunal is to balance the nature and gravity of the offence and its bearing, if any, on the member's fitness to practise as a tax adviser; and to weigh up the need to protect the public and confidence in the reputation of the profession against the need to impose a further penalty and its consequential impact on the ability of the member to practise their profession.*

- b. Consideration needs to be given to whether the conduct crossed the line of damaging the standing of the member as a provider of tax services or harmed the profession. A member owes a duty not to act in a way that would bring the CIOT/ATT into disrepute or in a way that would harm the reputation of the CIOT/ATT.*
- c. Given the range of situations, it is not possible to give simple guidance on the likely sanction(s). The Tribunal should have regard to the full range of sanctions that are available, from No Further Action to Expulsion.*

47. The Tribunal bore in mind its duty to only impose a sanction which was appropriate and proportionate in all the circumstances of the case. It therefore considered the available options from the bottom upwards.

48. The Tribunal considered that imposing no sanction or allowing the matter to rest on file would not appropriately mark the nature of Mr Rodgers's misconduct. There had been serious failings and there was limited insight. The Tribunal did not consider such sanctions would address the aims of upholding the proper standards of conduct in the profession and maintaining its reputation.

49. The Tribunal did not consider a warning was appropriate given this was not minor misconduct. An apology was not appropriate as the misconduct did not affect any clients or members of the public.

50. The Tribunal next considered a Censure and had regard to the relevant part of the ISG. There was no risk of harm to clients and there was no requirement for a sanction with the aim of protecting the public. The Tribunal noted that Mr Rodgers had accepted his shortcomings and had provided some insight, albeit this was limited and developing. Mr Rodgers had shown he understood the impact of his misconduct on the profession and the public. He detailed his firm's complaints procedure and stated that he would seek advice from the CIOT if faced with such a request in the future. There were no prior regulatory findings having been made against Mr Rodgers and there had been no repetition since the misconduct almost two years ago.

51. The Tribunal thus concluded that a Censure was the appropriate sanction. With respect of the period of the Censure, the Tribunal considered the standard period of three years did not suffice given the limited insight and the risk of repetition. Mr Rodgers had failed to obtain the advice at the time, he had read the legislation but did not appear to understand it (given he failed to comply with the request), his initial response on how he would react to the same situation recurring was that he would deflect the query, and he had not sought to educate himself or take steps to mitigate the risk of future repetition. The Tribunal considered the Censure should be for five years.
52. The Tribunal also considered if a fine would be appropriate but considered a financial penalty would be punitive and it would not suit any appropriate purpose. The Tribunal determined that the sanction of the Censure would serve as an appropriate deterrent to members of the profession and mark the misconduct.
53. The Tribunal did not consider a suspension was appropriate as it was disproportionate. The misconduct arose from a failure to understand his duties as opposed to a deliberate desire not to cooperate.

COSTS:

54. The TDB applied for costs in the sum of £2,733. Mr Rodgers did not oppose the costs claim.
55. The Tribunal had regard to the Guidance on Awarding Costs. The presumption is that the Defendant will pay the costs on the principle that the majority of members should not subsidise the minority who have brought disciplinary proceedings upon themselves. The Tribunal found no reason to depart from that presumption. There was no reason that the costs incurred by the TDB should be reduced as they were rightly incurred. The Tribunal considered the breakdown of the costs claimed in the schedule and was satisfied that those costs were reasonable and had been appropriately incurred. It was noted that the costs had been apportioned for the day and there had been a reduction to reflect the other case listed.
56. The Tribunal awarded the costs in the sum claimed, at £2,733.

PUBLICITY:

57. The Tribunal made an order under regulation 28.1 of the Disciplinary Regulations for publication of this order made and the written reasons, naming the member.

58. The Guidance on the Publication of Disciplinary and Appeal Decisions sets out the general principle that a disciplinary finding made against a member will be published and the member named in the publication. The Tribunal found no reason to depart from that principle, this was agreed by the parties, and the Tribunal directed that this decision be published in accordance with the Guidance.

59. Pursuant to regulation 28.4 of the Disciplinary Regulations, publication will be made after the expiry of the appeal period, namely within 21 days of the effective date of this order, provided no valid notice of appeal is served within that period.

EFFECTIVE DATE

60. Pursuant to regulation 20.9, this decision will be treated as effective from the date on which it is deemed served on Mr Rodgers.

T Rakhim

**Tanveer Rakhim
(Chair)
2 May 2024**

APPENDIX 1

IN THE DISCIPLINARY TRIBUNAL OF
THE TAXATION DISCIPLINARY BOARD

TDB/2022/34

HEARING ON 16 April 2024

B E T W E E N

TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR ALAN RODGERS
(CIOT membership No. 159355)

SCHEDULE OF CHARGES

The charges set out below make reference to the following rules of the Professional Rules and Practice Guidelines 2018 (the “PRPG”) of the Chartered of Taxation (the “CIOT”) and the Association of Taxation Technicians (the “ATT”), as amended from 1 January 2021:

Charge 1

1.1 Following a request from his client’s Trustee in Bankruptcy on 30 June 2022, the Defendant failed to provide the following:

- a. The client’s tax return information;
- b. Bank Statements for the client’s company, [REDACTED];
- c. Details of whether the client had made any personal investments into [REDACTED]

1.2 The Defendant failed to provide the information sought in Charge 1.1 when the request was repeated by the Trustee in Bankruptcy on 20 July 2022.

1.3 The Defendant failed to provide the information that is the subject of charges 1.1 and 1.2, knowing that he was obligated to do so under section 312 and 366 of the Insolvency Act 1986.

Charge 2

2.1 Following a request from his client’s Trustee in Bankruptcy on 8 August 2022, the Defendant failed to produce his organisation’s complaints procedure.

Charge 3

3.1 Consequent upon the facts and matters set out in Charge 1 and/or Charge 2 above, the Defendant is in breach of:

a. Rule 2.2.1, in that the Defendant knowingly failed to provide relevant information

b. Rule 2.6.3, in that the Defendant has:

– Performed his professional work or conducted his business relationships improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to himself, or to the CIOT or to the tax profession; and/or

– Conducted himself in an unbecoming, unlawful or illegal manner which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT.

c. Rule 11.3.1, in that the Defendant received a request for information or documents from a third party, and should have either obtained their client's permission or ensured that the request was legally enforceable and legitimately overrode client confidentiality.

END OF CHARGES

APPENDIX 2

RULE 2.2.1 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018

2.2.1 (Integrity)

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.

RULE 2.6.3 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018

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, or to the CIOT 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). For the avoidance of doubt, conduct in this context includes (but is not limited to) conduct as part of a personal or private life.*

RULE 11.3.1 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018

11.3.1 Request from other third parties

If a member receives a request for information or documents from any third party, they should either obtain their client's permission or ensure that the request is legally enforceable and legitimately overrides client confidentiality. This may include requests by HMRC, although the engagement letter will normally provide for the provision by a member of documents to HMRC without further recourse to the client. Determining whether a third party has legally effective powers to request disclosure or whether the request can be discussed with the client can be a complex matter and a member should consider obtaining specialist advice, particularly when a client refuses permission to disclose.