

IN THE DISCIPLINARY TRIBUNAL OF THE
TAXATION DISCIPLINARY BOARD

TDB/2020/17
TDB/2022/44

**THE TAXATION DISCIPLINARY
BOARD**

TDB

-and-

**SHELLEY BAKER
(CIOT MEMBER NO. 163673)**

Defendant

DECISION AND REASONS

Date of Hearing

11 July 2025

Venue

Virtual using Microsoft Teams

Tribunal Members

Legally Qualified Chair

Brett Wilson

Professional Member

Stuart McKinnon

Lay Member

Amran Hussain

Tribunal Clerk

Nigel Bremner

**Taxation Disciplinary Board
(‘TBD’)**

Represented by Mr Brodsky of counsel

Ms Baker

Present, and represented by Mr Hickey
and Mr Foster (both) of counsel

Introduction

1. The Tribunal convened on 11 July 2025 to consider the issues of sanction, publicity and costs following its decision in this matter on liability. The Tribunal’s decision dated 9 May 2025 sets out the background, the parties’ arguments, the charges and the provision of the PRPG pleaded by the TDB.
2. Perhaps more importantly, it sets out the Tribunal decision on each of the charges and the basis on which the Tribunal arrived at its conclusions.
3. In summary, the Tribunal found:
 - a. Charge 1 was not proved.
 - b. Charge 2 was proved and the Tribunal found that Ms Baker did not deliberately set out to misrepresent the advice given or the risks involved with the Alchemy Scheme but had seriously misjudged the advice on risk provided by leading counsel. The Tribunal further found that real mischief was the lack of care and diligence in relation to the advice. The Tribunal did not find that Ms Baker had breached regulation 7.4 of the PRPG.

- c. Charge 3 was proved and the Tribunal concluded that there was a failure, by Ms Baker, to consider the potential conflict of interest and take appropriate steps. The Tribunal did not see evidence to show that Ms Baker wilfully decided to conceal matters from clients. The Tribunal did not find Ms Baker to have been dishonest.
 - d. Charge 4 was proved and the Tribunal concluded that the letters that were before it appeared to be reasonable in tone whilst not being able to go behind the remarks made by a tribunal judge.
 - e. Charge 5 was admitted by Ms Baker.
 - f. Charge 6 was proved and this arose from the Tribunal's decision in respect of Charges 2 to 4 and Ms Baker's admission of Charge 5.
- 4. The above provided a basis upon which the Tribunal would consider sanction whilst noting the breaches of the PRPG which were proved by the TDB.
 - 5. The Tribunal had access of the bundles from the previous hearing and a 'sanctions hearing bundle' amounting to 24 pages which included the parties' written submissions and a statement from Ms Baker exhibiting a schedule of income and outgoings.
 - 6. The Tribunal reminded itself that the purpose of sanction is public protection and it not punitive.
 - 7. Prior to the commencement of the hearing the Tribunal had received a statement and evidence from Ms Baker. The Tribunal had also received written submissions from the parties. The TDB had applied for leave to cross-examine Ms Baker on the evidence that she had submitted relating to sanction. The Tribunal was of the view that whilst this was an unusual step to take in hearings that deal with sanction, sentence or quantum in courts and tribunals, it was not unheard of.

8. The Tribunal carefully considered the TDB's application and Ms Baker's response to it. She opposed it. The Tribunal reached a decision which sought to provide relevant information whilst ensuring that Ms Baker was treated fairly and not ambushed. The Tribunal issued a written decision and it is not intended to repeat it in this decision.
9. The Tribunal heard evidence from Ms Baker, the Tribunal was of the view that she answered questions clearly and she was trying to assist the Tribunal. She made concessions and she did not appear evasive or unhelpful. Indeed, the Tribunal was assisted by the evidence of Ms Baker when it was considering the issue of sanction. The Tribunal indulged the TDB to continue the cross-examination of Ms Baker beyond the time which it had allowed and afforded Ms Baker's representatives the opportunity to re-examine her. The Tribunal was satisfied that Ms Baker had been cross-examined only on her evidence and that there was no attempt to ask her questions about counsel's submissions.
10. Ms Baker explained that £2,000,000 had been paid to a [REDACTED] in December 2014 following negotiations about his departure from Root 2 but she did not accept that it followed that Root 2 could be valued at £6,000,000. She was of the view that the agreement reached was a commercial one based on a number of factors and concessions.
11. Ms Baker was unable to say how much profit Root 2 had made but she seemed to accept that it was a 'seven figure sum'. It was put to Ms Baker in cross-examination that the Alchemy Scheme had avoided tax in the region of £10,000,000 to £100,000,000's.
12. Ms Baker was asked about the clients and she maintained her position that they were sophisticated individuals who were running their own business. This was not a case of them being paid and taxed on a PAYE basis.

13. Ms Baker told the Tribunal that the clients were referred to them and Root 2 paid a commission to the professionals who referred them. She made reference to a 'introducers agreement' and that the accountants were transparent about that.
14. She was asked about her personal circumstances. She had a SIPP which had assets of about £550,000. She was concerned about [REDACTED] and was trying to ensure that if she suffered issues with her health in the future there would be a cushion for [REDACTED]
15. She had used some of her profits from Root 2 to buy the family home which she shared with [REDACTED]. She estimated that the family home was worth about £1,900,000. The equity in that property was divided equally with [REDACTED] and she maintained that [REDACTED] agreement would be required to use the family home as security for any mortgage or loan.
16. Ms Baker was asked questions by the Tribunal. The Tribunal had noted that whilst Ms Baker said that she was employed in a teaching role and pays tax on a PAYE basis, her schedule of income and outgoings referred to a payment on account for 2024/25. She explained that she had received rental income on the family home for a period when they lived away. She also explained that she does not receive child benefit because [REDACTED] income was too high.

Submissions

17. The TDB argued that the appropriate sanctions in this case were fines and expulsion. It argued that the appropriate guideline in the ISG was that for 'unethical conduct'. It referred the Tribunal to the guidance for a serious lack of objectivity / conflict of interest and pointed out that the starting point was expulsion save in the less serious cases.
18. The TDB identified a number of aggravating features which, it said, were:
 - a. not an isolated incident;

- b. significant losses;
 - c. Ms Baker making a significant personal financial gain; and
 - d. the conflict of interest should have been obvious.
- 19. The TDB also argued that the Tribunal should consider the aggravating features set out in the guidance in the ISG relating to the promotion of avoidance schemes which, it said, were:
 - a. a failure to describe the arrangements fully and openly to the client or HMRC; and
 - b. repeated losses before the courts (firstly on DOTAS and then on substantive liability).
- 20. The TDB argued that the level of seriousness justified expulsion rather than suspension. The TDB also argued that the maximum level of fine of £25,000 was appropriate for each of charges 2 and 3. The TDB sought a total fine of £50,000.
- 21. The TDB sought costs and publicity. The TDB had provided a costs schedule. The Tribunal noted that the costs schedule was served shortly before the hearing and it was of the view that Ms Baker was right to raise that point. However, Ms Baker had an opportunity to make submissions on it.
- 22. It was argued on behalf of Ms Baker that the Tribunal should consider the least severe sanction(s) first. The Tribunal was referred to the case of *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council* [2011] EWHC 927 (Admin). The proposition relied on by that authority was the focus on whether the individual concerned presented a risk to the public.
- 23. It was pointed out that Ms Baker had not participated in any avoidance arrangements since Alchemy and she did not present a risk to the public. It was argued on her behalf that no

more than suspension could be justified due to low risk of recurrence, and the public could be protected by temporary exclusion from the profession.

24. It was argued that the TDB had taken a broad brush approach to aggravating factors and that they had failed to consider what had happened in practice in the context of the evidence.
25. The submissions on behalf of Ms Baker took issue with the points made by the TDB. The submissions drew the Tribunal's attention to aspects of its decision on liability. The Tribunal was reminded that it had not made findings about the losses of clients or profits made by Ms Baker and that no evidence was placed before the Tribunal on these issues.
26. The submissions invited the Tribunal to consider mitigating factors which were:
 - a. Ms Baker's unblemished record;
 - b. no deliberate intention to mislead;
 - c. no findings of dishonesty or wilful conduct; and
 - d. the evidence of Mr Fallows was accepted including as regards Ms Baker's character.
27. Further submissions were made regarding the charges and the level of fine, should that be a sanction which the Tribunal was minded to consider.
28. The Tribunal was informed that there have been no other regulatory concerns involving Ms Baker.

Decision

Sanction

Charge 2

29. The Tribunal considered the submissions and evidence outlined above.
30. The Tribunal was of the view that, in relation to the ISG, the most relevant guidance in relation to charges 2 and 3 was that set out in section 7 – unethical conduct. The Tribunal noted that this was intended to cover a wide range of misconduct. Particular examples of behaviour referred to includes the provision of information and lack of objectivity.
31. The section on unethical conduct also provides further guidance when considering cases that relate to the promotion of avoidance schemes.
32. The Tribunal noted that the starting point in section 7 was expulsion but that seemed to apply where there are more serious failings such as dishonest misconduct and/or where the misconduct is deliberately misleading or deceitful.
33. The Tribunal also considered the alternative starting point of censure and fine of £5,000 where there is less serious failings.
34. The Tribunal noted that these are starting points and the ISG provides guidance. Adopting a phrase commonly used in the criminal courts, ‘these are guidelines not tramlines’, the Tribunal reminded itself that this is not a punitive exercise, the focus is public protection. It had that principle at the forefront of its mind when considering the aggravating and mitigating factors listed in this particular section of the guidance.
35. The Tribunal then considered the available sanctions that are listed in section 3 of the ISG. The Tribunal noted that the list of available sanctions and the guidance on their applicability

appears in ascending order of seriousness and that was the correct approach to take when considering each charge.

36. Turning to Charge 2, whilst the conduct of Ms Baker was not deliberate it was sustained over a period of time and it likely to have impacted on a number of clients which could be reasonably inferred due to the amounts involved. The Tribunal accepted the submissions made on behalf of Ms Baker regarding the lack of evidence on the amounts made and the tax avoided but it was of the view that it could attach some weight to the oral evidence that Ms Baker gave during the hearing regarding £2,000,000 paid to a colleague as part of him leaving the business. This is indicative of this being a scheme which generated significant revenue for Root 2.
37. The Tribunal was of the view that the advice letter which formed the focus of charge 2 was lacking and it reminded itself of the rhetorical question it posed as to why it referred to advice being given by leading counsel (see decision on liability at paragraph 75).
38. The Tribunal was of the view that the aggravating factors are:
 - a. the advice was provided recklessly;
 - b. the size of loss was not insubstantial; and
 - c. there was a failure to fully explain the risks to clients.
39. As to mitigating features, the main feature was the lack of dishonesty and in addition:
 - a. efforts were made by Ms Baker to seek advice from counsel;
 - b. she reasonably believed the Alchemy was lawful and effective;

- c. at the time of the promotion of Alchemy (some 9 years ago) schemes such as that were not uncommon;
 - d. there has not been a repetition.
40. The Tribunal was of the view that in this case the sanctions of no further action, an order to rest on file, apology and warning were not appropriate as this could not be described as minor misconduct. An apology would not be practicable as there was no identified individual to offer an apology to.
41. The Tribunal considered censure but it was of the view that this would not be appropriate as the misconduct was not isolated, it was more likely than not to have involved a number of clients over a period of time. The nature of the advice letter and the Tribunal's findings meant that there was a risk to the public even though there was evidence of insight and no evidence of repetition.
42. The Tribunal was of the view that a fine was the appropriate sanction in this case as it would act as a deterrent. It would best protect the public to discourage a repetition of the misconduct and reflects the serious nature of the findings made by the Tribunal.
43. The Tribunal considered the TDB's case that a maximum fine of £25,000 should be imposed. The Tribunal was of the view that it would be disproportionate. Such a level of fine would not reflect the Tribunal's findings as to lack of dishonesty and wilful misconduct.
44. The Tribunal had regard to the guidance contained in the ISG regarding fines. As aforesaid, in this case the purpose of a sanction is deterrence. The Tribunal had to consider a sanction which is proportionate and protects the public, taking into account its own findings that Ms Baker's conduct was more negligent or reckless in nature. However, the Tribunal had to balance these more mitigating features against the Tribunal's findings and observations

regarding the advice given to her by leading counsel, how she used that advice and the importance of her being responsible for the advice that she gave to her clients.

45. The Tribunal also considered Ms Baker's recent statement. It is dated 6 June 2025. It starts by explaining that its purpose is to provide financial information. However, it was also an opportunity for Ms Baker to also provide evidence of her reflection on the findings of the Tribunal and show a level of insight yet she failed to avail herself of that opportunity. Ms Baker did not show remorse and that gave rise to a concern of the risk of repetition.
46. Accordingly, the Tribunal concluded that a fine of £12,500 would be proportionate. It would reflect the nature of the misconduct (namely not wilful or dishonest yet serious). The Tribunal considered the submissions and evidence provided in support of Ms Baker's financial circumstances. However, the Tribunal noted that she did not provide evidence that [REDACTED] would not consent to a mortgage on the family home and the payment on account would suggest that she was in receipt of substantial rental income. The Tribunal accepted that Ms Baker could not access funds or assets in her SIPP but she has not stated that the shares which she holds cannot be sold. The Tribunal therefore could see no good reason to reduce the fine below £12,500.

Charge 3

47. In relation to charge 3, the Tribunal did not accept the TDB's submission that a fine of £25,000 was proportionate. The Tribunal was of the view that there were similarities to the nature of the misconduct in charge 2. The starting point was the same and the aggravating and mitigating features that were present in relation to charge 2 were also present in relation to charge 3.
48. The distinguishing factual feature was the failure to appreciate and take steps to mitigate the conflict of interest. The Tribunal found that Ms Baker had not taken on board the importance

of explaining her involvement and lack of full independence which would have allowed a client to properly evaluate and assess the advice she was giving them.

49. As per charge 2, the Tribunal did not find that she had acted dishonestly or with the intention to deceive but it would have been an obvious risk if she had applied her mind properly rather than allow her judgment to become clouded.
50. The Tribunal was of the view that this placed Ms Baker's clients at risk of incurring otherwise avoidable losses. The Tribunal was of the view that this is a reasonable inference that could be drawn from the evidence. Ms Baker and her colleagues would clearly have invested significant sums. The Tribunal took judicial notice of the likely charges of leading counsel and experienced professional advisers. The Tribunal felt that it did not need specific evidence of actual losses to draw such an inference, reliance can be had of Ms Baker's own evidence during the sanctions hearing on the monies paid to a colleague and the value of the house which she purchased with the income from her venture.
51. The Tribunal attached little weight to the argument that the clients were sophisticated. That may well have been the case but the standard duty of care of a professional is not set by the sophistication of their client. Ms Baker prays in aid that they were not just employees via PAYE but ran their own companies. However, whilst they may have been successful business people, they were not necessarily experts in complicated areas of tax and tax law hence why they were reliant on Ms Baker.
52. As per the Tribunal's observations in relation to charge 2, the Tribunal noted that despite having the opportunity, Ms Baker has not reflected on the Tribunal's decision and provided evidence of insight in her most recent statement. The Tribunal was of the view that this gives rise to risk of repetition and a fine of £12,500 is required to protect the public as a deterrent. The Tribunal was of the view that the level of fine imposed reflects the seriousness of the misconduct having regard to its findings.

53. As per its reasons in relation to charge 2 regarding Ms Baker's financial circumstances the Tribunal could not find a good reason to reduce this fine even when this, when coupled with the fine imposed on charge 2 increases the financial burden on Ms Baker.
54. Notwithstanding the fines that the Tribunal imposed, the Tribunal remained concerned about the risk of repetition and a lack of insight. The Tribunal noted that Ms Baker is in a teaching role. However, the Tribunal noted that the schedule of income and outgoings which Ms Baker had provided appeared to show a shortfall and she may be tempted to revert to her previous career and embark upon a similar course of behaviour. The Tribunal felt that further steps were necessary to protect the public.
55. The Tribunal was of the view that expulsion was disproportionate given that it has found that on the whole, in relation to charges 2 and 3, Ms Baker had behaved more recklessly rather than wilfully or dishonestly. However, the Tribunal was of the view that the risk to the public is increased by the serious nature when considering the totality of the Tribunals' findings, and the period over which the misconduct took place. The Tribunal therefore concluded that an additional sanction of suspension was proportionate.
56. The Tribunal considered the guidance provided in the ISG regarding the suitability of the sanction of suspension. The guidance suggests that this may be warranted where the misconduct is not so serious to justify expulsion. This would protect the public sufficiently as Ms Baker is currently working in a teaching role and a period of 2 years suspension allows for some reflection, which the Tribunal felt was lacking.

Charges 4 and 5

57. As to charges 4 and 5, the Tribunal was of the view that this was not the behaviour that members of the public would expect of a registered tax professional. The observations of the tribunal judge regarding Ms Baker and her colleagues' engagement had the potential to

undermine the trust and confidence that the public places in the profession as the judge had described the engagement as ‘stonewalling’ and ‘an attempt to deflect’. The Tribunal was of the view that an objective member of the public would expect tax professionals to engage more co-operatively with HMRC.

58. The Tribunal was of the view that the same can be said of Ms Bakers continuation in practice without adequate insurance. The public would have a legitimate expectation that a tax professional had professional indemnity insurance in place which could be relied on if necessary.
58. As to charge 4, the Tribunal was of the view that the most relevant part of the ISG was section 9 – professional behaviour. One of the issues that this applies to is a members interaction with HMRC. The guideline sanction is censure and a fine of £3,000.
59. The Tribunal had regard to the suggested examples of aggravating and mitigating factors. The Tribunal was of the view that none of the suggested examples were a striking feature of this charge. However, there had been concerning observations by a judge. That rendered the seriousness of the misconduct beyond the scope of no further action, warning, apology or censure but a low level fine would act as some deterrent when the Tribunal considered each sanction in ascending order of seriousness. The Tribunal concluded that a fine of £500 was proportionate.
60. As to charge 5, the Tribunal was of the view that the most relevant part of the ISG was section 8 – other breaches of byelaws or regulations. One of the issues that this applies to is a members practice without PII. The guideline sanction is censure and a fine of £1,000.
61. The Tribunal was of the view that the aggravating feature was the continuation of practice in disregard of the absence of adequate insurance from 3 May 2020 until it ceased trading

on 31 July 2023 but the seriousness is mitigated by Ms Baker informing the regulator of the matter.

62. The Tribunal was of the view that this is serious as it meant that for a not inconsiderable period, Ms Baker's clients were potentially left without an adequate remedy if they made a claim against her. It is a significant safety net that had been removed from them. For those reasons, the Tribunal was of the view that the seriousness of the misconduct went beyond the scope of no further action, warning, apology or censure but a low level fine would act as some deterrent when the Tribunal considered each sanction in ascending order of seriousness. The Tribunal concluded that a fine of £500 was proportionate.
63. The overall sanction of a fine of £26,000 and suspension of 2 years adequately protects the public having regard to the totality of Ms Baker's misconduct.
64. Given that charge 6 is a derivative form the other charges, the Tribunal decided that there would no further action in respect of that. The mischief and the protection of the public could be addressed via the Tribunal's decision in respect of the other charges.

Costs

65. The Tribunal was asked to order Ms Baker's costs. The Tribunal acknowledged the concerns of Ms Baker regarding the late service of the TDB's costs schedule. The Tribunal was of the view that the schedule was brief and could have been considered by experienced counsel within the time available. Ms Baker did not seek an adjournment of this issue.
66. The Tribunal considered regulations 20.7 and 27 of the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016 and January 2024). The Tribunal also considered the guidance on costs in the ISG.

67. The general principle is that it would require exceptional circumstances for an unsuccessful defendant not to pay the TDB's costs. The question for the Tribunal was whether Ms Baker was an unsuccessful defendant. The Tribunal was of the view that Ms Baker could fairly be described as being unsuccessful in this litigation. She contested all but one of the charges and was successful in defending only one charge (that was charge 1).
68. However, in exercising its discretion the Tribunal was of the view that Ms Baker had been successful in defending a significant allegation which would have consumed considerable resources to address. It was only fair that this is reflected in any costs decision.
69. Therefore, on the principle of costs, the Tribunal decided that Ms Baker should pay the TDB's costs. As to quantum, the TDB's costs that Ms Baker must pay was assessed at £31,748. This represented a reduction of 20%. The Tribunal was of the view that this reflected Ms Baker's successful defence of charge 1 which had required a consideration of a significant amount of material and involved detailed analysis and preparation.

Publicity

70. The Tribunal had regard to regulation 28 of the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016 and January 2024). This provides that publication is not intended to be punitive but it is to provide that the public interest is being protected and to demonstrate that where a complaint is made, there are defined and transparent procedures for examining a complaint and, where proved, imposing a sanction. Decisions of Disciplinary Tribunals are usually published unless there are exceptional circumstances not to.
71. The Tribunal found no exceptional reasons as to why the Tribunal's decisions on liability and sanction should not be published. There should be publication subject to the Tribunal's

decisions on timing set out below. There must also be suitable redactions as there have been some references to [REDACTED].

Timings

72. The Tribunal heard submissions on time to pay and timing of publication. The Tribunal decided that Ms Baker may have until 13 October 2025 at 4pm to pay costs and fines.
73. The Tribunal has taken into account the totality of the sanctions, Ms Baker's financial circumstances, and the need to uphold public confidence and professional standards. The sanctions that the Tribunal has imposed are considered necessary and proportionate.

Brett Wilson

Chair

25 July 2025