

Determination by Consent Report

**Mr Marc Living
Pallant Chambers
12 North Pallant
CHICHESTER
West Sussex PO19 1TQ**

(Middle Temple, July 1983)

A. Background

1. Mr Marc Living was called to the Bar by Middle Temple in 1983 and, during 2014 and 2015, was a BSB regulated person, authorised to practise as a self-employed barrister from Pallant Chambers.
2. During this time, he supplied services, namely the provision of barrister advice and professional work, in contravention of a condition requiring him to give a security for the payment of any Value Added Tax which was or may have become due. This led to his conviction of an offence on 8 February 2017 at Poole Magistrates Court.
3. Mr Living self-reported the matter on 9 February 2017, following which, the Bar Standards Board raised on own motion complaint against Mr Living.

B. Charge(s)

4. As a consequence of the conduct outlined in paragraph 2 above, the BSB has charged Mr Living with one breach of the BSB Handbook/Conduct Rules amounting to professional misconduct. The charge is:

Charge 1

Statement of offence - Professional misconduct contrary to Core Duty 5 of the Bar Standards Board Code of Conduct (9th Edition).

Particulars of offence – Marc Living behaved in a way which was likely to diminish the trust and confidence which the public places in him or in the profession, contrary to Core Duty 5, in that between 30 October 2014 and 19 August 2015 at Petersfield he supplied services, namely the provision of barrister advice and professional work in contravention of a condition requiring him to give a security for the payment of any Value Added Tax which was or may have become due. He was subsequently convicted at Poole Magistrates' Court on 8 February 2017 of an offence under Section 72 (11) and paragraph 4(2) of Schedule 11 to the Value Added Tax Act 1994 and sentenced to a fine of £3000, compensation of £1154, £85 costs and a £120 victim surcharge to fund victim services.

C. Summary of Facts

5. Core Duty 5 (Part 2 of the BSB Handbook, 1st and 2nd Edition) states that a BSB regulated person must not behave in a way which is likely to diminish the trust and confidence which the public places in that person or in the profession.
6. In accordance with Schedule 11 Paragraph 4(2) of the Value Added Tax Act 1994: “Where it appears to the Commissioners requisite to do so for the protection of the Revenue, they may require a taxable person, as a condition of his supplying goods or services under a taxable supply, to give security, of such amount and in such manner as they may determine for the payment of any tax which is or may become due from him. Once HMRC has identified a risk that requires a security, the business is served with a Notice of Requirement which informs the business of the amount of security required. It is a criminal offence to continue to make taxable supplies without providing the security”. The Value Added Tax Act 1994 Section 72(11) states: “If any person supplies goods or services in contravention of Paragraph 4(2) of Schedule 11, he shall be liable on summary conviction to a penalty of level 5 on the standard scale.”
7. In or around 2010 Mr Living began to get into financial difficulties both as the result of lower levels of work, and later than usual payments from solicitors. He was still able to pay bills (including Value Added Tax) as and when they became due, but his reserves were shrinking.
8. By 2012, Mr Living was beginning to get into arrears, with chambers payments and other financial commitments such as mortgage repayments. His overdraft was converted to a fixed loan and the facility withdrawn.
9. At around this time the collection of Value Added Tax (VAT) switched to a computer only system, whereupon the quarterly returns (and reminders) were no longer sent out. Mr Living recalled trying to register for the computerised service at the time, but was unable to do so through not having some of the information required.
10. Thereafter, Mr Living`s management of his financial affairs deteriorated and he conceded that he “buried his head in the sand”. This meant that when a letter arrived prompting him to remember that he was required to address the issues with his VAT, something else – for example, the need to fend off a possession order – would arise which required his attention, the VAT issue went back to the back of his mind.

11. Mr Living submitted a VAT return in Q1 of the 2012 -13 tax year but no further returns were submitted until HMRC took enforcement action in August 2014. His centralised assessments for VAT payable during this period were not paid.
12. On 12 August 2014, an Officer from HMRC served Mr Living with a Notice of Requirement for Security (NOR) under Schedule 2 Paragraph 4 (2) (a) of the Value Added Tax Act 1994. The security required was in excess of £40,000, (at that time Mr Living owed over £30,000 in excess tax). HMRC had concluded that due to his poor tax compliance history, Mr Living posed a high risk to revenue and therefore a security was required. At that time nine VAT returns were outstanding.
13. On 18 August 2014, Mr Living telephoned HMRC. He confirmed that he had received the NOR. The Officer who spoke to Mr Living explained that the NOR had been served to protect against future tax loss due to current non-compliance. Appeal options were explained to Mr Living, he was also advised that he risked a criminal investigation if no appeal was made and security deposit not paid after 30 days and he continued to make taxable supplies. (This warning was later confirmed in writing in a letter dated 8 September 2014).
14. Mr Living concluded the conversation on 18 August 2014 by indicating he would send in a written appeal and see about submitting the outstanding VAT returns.
15. On 10 September 2014 Mr Living wrote to HMRC requesting a review of the requirement to provide a security.
16. On 19 September 2014 HMRC sent a letter to Mr Living upholding the requirement for security.
17. On 19 November 2014 officers from HMRC visited Mr Living at his home address. Mr Living explained that he had made an appeal against the requirement for security to VAT & Duties Tribunal.
18. In early 2015 there appeared to be difficulties in registering the appeal on the Tribunal system. Eventually an appeal was registered later in 2015 but struck out for non-compliance with directions. Mr Living says he never received the letter containing these directions. At this point or soon thereafter Mr Living abandoned the appeal as he was no longer registered for VAT.
19. On 3 June 2015 Mr Living was declared bankrupt after a petition was presented by HMRC for unpaid taxes. Mr Living reported the fact of the bankruptcy to the BSB on 17 June 2015.

20. On 10 May 2016 officers from HMRC visited Mr Living and put to him the evidence that they had regarding the fact that no payment of security had been made and that he continued to make taxable services after service of the NOR.
21. On 8 February 2017 Mr Living appeared before Poole Magistrates Court and entered a guilty plea to the VAT Act offence and was sentenced to a fine of £3000, compensation of £1154 was ordered together with a victim's surcharge £120 and costs of £85. He self-reported to the BSB the following day.
22. On 23 June 2017, the Bar Standards Board raised a complaint against Mr Living, as a result of the above conduct.
23. In response to the complaint, Mr Living put forward the following points in mitigation:
- i. There were internal reviews and an external (to the Tribunal) appeal from the decision to issue the NOR. Whilst conceding that he agreed that the notice (and subsequent correspondence) expressly provided that a review did not operate as a "stay of execution", during the period of the reviews, Mr Living pointed out that it was known by HMRC staff that he was continuing to work and he was under the impression that, had he been successful at the review stage, no offence would have been committed;
 - ii. After several unsuccessful attempts to connect to the VAT website, Mr Living said that he asked his accountant to file (back and ongoing) returns, which filings were completed by the end of 2014;
 - iii. HMRC served Mr Living with a statutory demand in December 2014 and a bankruptcy petition in January 2015. During the early part of 2015 Mr Living was trying to put together an Individual Voluntary Arrangement (IVA) which, he hoped, would include an agreement regarding the VAT situation. During that period, Mr Living filed and paid ongoing VAT returns;
 - iv. Mr Living cooperated fully with all requests for information or documentation from HMRC;
 - v. Mr Living failed to put together a viable IVA proposal and was made bankrupt on HMRC's petition;

- vi. Mr Living said “I have been practising for 25 years and have never before faced disciplinary proceedings. I like to think that I am a capable barrister and have never knowingly let down a client or allowed my personal problems to affect my work. This is the first time I have allowed my tax affairs to get to such a state”;
- vii. There is no evidence that Mr Living`s clients were affected by his conduct. As is mentioned in paragraph 23(iii), he filed and paid ongoing VAT returns from January 2015 onwards. In addition, he paid compensation of £1,154 (as claimed by the Revenue and ordered by the Court) in respect of (unpaid) VAT falling due after the NOR was served. Unpaid VAT from before the NOR, however, is being dealt with within his bankruptcy; and
- viii. Mr Living is not currently registered for VAT and says that a recurrence of the offence is therefore not possible.

24. The Professional Conduct Committee (PCC) considered the complaint against Mr Living and his comments at its meeting on 14 December 2017 when it decided that there was sufficient evidence of a breach of the BSB Handbook to warrant disciplinary action for professional misconduct. The Committee further decided that the case was suitable for disposal under the Determination by Consent (“DBC”) procedure.

25. The BSB wrote to Mr Living on 19 December 2017 informing him of the PCC’s decision and invited him to consent to the matter being dealt with under the DBC procedure. Mr Living replied by email on 22 December 2017, giving his consent.

D. Previous Disciplinary Findings

26. Mr Living has no previous disciplinary findings.

E. Plea and Mitigation

27. Mr Living advised the BSB by email dated 20 February 2018 that he:

- (a) did not dispute the facts as set out in sections A, C and D of this report; and
- (b) admitted the charge as set out in section B of this report.

28. In mitigation, Mr Living stated that he had no further mitigation to that set out in paragraph 23 of this report.

F. Professional Conduct Committee's decision and reasons

29. On the basis of Mr Living's plea as set out at section E above, the Professional Conduct Committee finds the charge against Mr Living proved.

G. Professional Conduct Committee's sentence

30. The Professional Conduct Committee sanctions Mr Living as follows:

Charge 1

31. In sanctioning Mr Living on Charge 1, the Professional Conduct Committee has had regard to the enforcement strategy as well as the Sentencing Guidance (January 2014) issued by the Council of the Inns of Court. There is no guidance which covers the subject of the charge in this matter. The Committee considered an appropriate starting point to be a reprimand and a low level fine, defined as a fine of up to £1,000.

32. The Professional Conduct Committee considered the circumstances of the case and the matters put forward in mitigation by Mr Living as set out above. It has taken into account as mitigation Mr Living's admission of the charge and that Mr Living has no previous disciplinary findings.

33. By way of aggravating circumstances, the Committee noted the persistent conduct over a lengthy period of time.

34. Taking into account the above-mentioned factors, the Professional Conduct Committee reprimands Mr Living and fines him in the sum of £500.