

# TAXATION DISCIPLINARY BOARD

## IN THE DISCIPLINARY TRIBUNAL OF THE TAXATION DISCIPLINARY BOARD

Ref: TDB/2019/11

### The Taxation Disciplinary Board

v

**Mr Christopher Bugden CTA**  
(Membership No:134762)

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## DECISION

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### **Introduction**

1. The Disciplinary Tribunal sat on 12 June 2020 to hear charges brought by the Taxation Disciplinary Board (TDB) against Mr Christopher Bugden ("the Respondent"), following receipt of information from Mr Petrou ("the Complainant"). The information provided by the Complainant indicated that the Respondent had been reprimanded and fined by the Institute of Chartered Accountants in England and Wales (ICAEW) and had subsequently been removed from membership of the ICAEW for non-payment of fines and costs.
2. The hearing was conducted remotely via a video conference platform due to the Covid-19 pandemic. The Tribunal was chaired by Ms Margaret Obi (a solicitor), sitting with Mr Andrew Gell (a lay member) and Mr Julian Stafford (a Chartered Institute of Taxation member – CIOT). The Presenter was Mr Alex Mills of Counsel. The Respondent was present and represented himself. The Clerk to the Tribunal was Mr Nigel Bremner.

## **Background**

3. The Respondent has been a member of the CIOT since 1984. Since 2013, CIOT members have been required to submit an annual return each year. The Respondent submitted annual returns from 2013 until 2019.
4. The Respondent was a member of the ICAEW until October 2014, when his membership was ceased for failing to satisfy a fine and costs order against him.
5. On 11 October 2013, a disciplinary Tribunal of the ICAEW found two allegations proved against the Respondent. The disciplinary Tribunal imposed a severe reprimand, a fine of £20,000 and costs of £28,000. On 18 September 2014, an appeal Tribunal of the ICAEW dismissed the Respondent's appeal against the 2013 decision. It ordered him to pay an additional £10,000 costs. The Respondent continues to challenge the correctness of the 2013 findings.
6. On 7 November 2018, a disciplinary Tribunal of the ICAEW found proved two allegations against the Respondent. It issued a reprimand against him, imposed a £3,000 fine, and ordered the payment of £10,000 of costs.
7. On 7 March 2019 the Complainant informed the TDB of various findings of the ICAEW relating to the Respondent. Attached to the Complainant's email was a news article referring to the Respondent's 2014 appeal, a copy of the November 2018 finding against the Respondent and a copy of the 2013 decision.
8. Copies of the three decisions were subsequently obtained by the TDB from the ICAEW.

### The 2013 ICAEW Disciplinary Tribunal ("DC") decision

9. The 2013 ICAEW case related to the Respondent's conduct as audit partner at "A Ltd" in respect of A Ltd's audit of its clients "D Ltd", "E Ltd", and "F Ltd" for the years ending 2 October 2009, 30 October 2009, and 26 September 2009. The audit of D Ltd was subject to a 'cold review' in July 2010, which identified deficiencies in the audit files. Following a visit, from the ICAEW Quality Assurance Department in December 2010, it was found that the file for D Ltd had been amended to correct various of the deficiencies identified by the cold review. The files for E Ltd and F Ltd had also been amended. Certain audit completion checklists had been marked with the name of another partner, Mr C, with a date of January 2010. The ICAEW alleged, and the DC found proved, that the Respondent instructed a junior employee of A Ltd to make the changes to the audit files, after the cold file review.
10. The DC made its decision without hearing from the junior member of staff, relying in part instead on the evidence of Mr C and another partner, Mr G, of the version of events given to them by that junior employee, and a letter written by him. It relied on the implausibility of the contention that Mr C would discredit himself by signing the sub-standard audit work, just to impugn the Respondent. The DC concluded that the Respondent had acted

improperly and that his conduct brought discredit upon himself, the ICAEW, and the profession of chartered accountancy. The DC also found proved a charge relating to the sub-standard quality of the audit work reviewed.

11. In their finding on sentencing, the DC stated, in respect of the charge:

*“[The DC] considered The Respondent’s conduct to be very serious, involving as it did impropriety and a falsification of audit working papers. In addition, the standard of the audit work for the year in question had been seriously deficient. The public was entitled to be confident that a member of the chartered accountancy profession would be scrupulously straight forward in all their dealings both with the public and those regulating the profession. The Respondent had undermined this confidence and brought discredit to the profession. “*

#### The 2014 ICAEW Appeal Tribunal (“AC”) decision

12. The Respondent appealed against the 2013 decision. He appealed both the findings, and the sanction. He argued that the allegations that had been found proved were false. The Respondent also argued that that could have been demonstrated if he had been represented and if he had had access to certain files, which was denied. In September 2014, an appeal Tribunal of the ICAEW heard and refused the appeal against the findings and sanction. A further £10,000 in costs was ordered.

13. As a result of non-payment of fines and costs, the Respondent “*went out of membership*” according to the ICAEW.

#### The 2018 ICAEW Disciplinary Tribunal (“DC”) decision

14. On 15 August 2018, another DC found proved two allegations against the Respondent. These matters predated those addressed in the 2013 decision. The proved allegations related to the Respondent’s role as a director of a company ‘A Ltd’. As a director of A Ltd the Respondent made loans totalling £358,000 to two other companies in which he was a director, whilst there were no safeguards in place to ensure his objectivity, and where those loans were not appropriately recorded in A Ltd’s financial statements. The DC found that:

*“The Tribunal took the view that the matters in the present case were serious in that they were not single, isolated incidents but a continuing course of conduct; that Defendant a lacked insight and demonstrated pattern a of incompetence, at best, as a professional accountant.”*

15. The Respondent was fined £3,000, reprimanded, and a costs order for £10,000 was imposed.

## **Schedule of Charges (as amended during the hearing)**

16. The charges set out below refer to the following rules of the Professional Rules and Practice Guidelines 2011 of the Chartered Institute of Taxation (the “CIOT”) and the Association of Taxation Technicians (the “ATT”) (the “PRPG 2011”), in force from 31 March 2011, until 8 November 2018:

- (1) 1.7 (duty to avoid bringing the CIOT into disrepute);
- (2) 2.1 and 2.2.1 (integrity);
- (3) 2.1 and 2.6.1 (professional behaviour);
- (4) 2.10.1 (obligation to notify the CIOT);

and the following rules of the Professional Rules and Practice Guidelines 2011 of the Chartered Institute of Taxation (the “CIOT”) and the Association of Taxation Technicians (the “ATT”) (the “PRPG 2018”), in force from 9 November 2018:

- (1) 2.1 and 2.2.1 (integrity).

### **Charge 1**

***1.1 In breach of rule 2.10.1 Mr Bugden did not inform the CIOT promptly or at all of any or all of the following instances of disciplinary action begun against him:***

- (a) On 11 October 2013, a tribunal of the Disciplinary Tribunal of the Institute of Chartered Accountants in England and Wales (“ICAEW”) found proved both heads of a complaint against The Respondent. The tribunal imposed a severe reprimand on Mr Bugden, and ordered him to pay a fine of £20,000 and costs of £28,000.*
- (b) On 15 August 2018, a tribunal of the Disciplinary Tribunal of the ICAEW found proved parts 1b and 3 of a complaint against The Respondent. The tribunal imposed a reprimand on Mr Bugden, and ordered him to pay a fine of £3000 and costs of £10,000.*

***1.2 Mr Bugden acted dishonestly and in breach of rule 2.1 and 2.2.1 in that he knew that he was obliged to inform the CIOT of any or all of the instances of disciplinary action in paragraph 1.1(a) – (c), and intentionally failed to do so.***

***1.3 By reason of failing to inform the CIOT promptly of any or all of the instances of disciplinary action in paragraph 1.1(a) – (c), The Respondent:***

- (a) breached rule 2.1 and rule 2.6.2 of the PRPG 2011 in that his failure to inform the CIOT was an action which brought discredit on the profession and/or amounted to Mr Bugden conducting his practice improperly or negligently to such an extent or on such number of occasions as to be likely to bring discredit to himself, to the CIOT, or to the members or any part of the membership or to the tax profession.*

*(b) breached rule 1.7 in that he brought the CIOT into disrepute.*

## **Charge 2**

*2.1 By virtue of the fact and circumstances of the disciplinary action outlined at paragraph 1.1(c) above, Mr Bugden:*

*(a) failed to avoid any action that discredits the profession, contrary to rule 2.1; and/or*

*(b) brought the CIOT into disrepute, contrary to rule 1.7.*

## **Charge 3**

*3.1 At a hearing of a TDB Interim Order Panel on 6 December 2019 Mr Bugden made an inaccurate statement in that he informed the panel that he had paid the fines imposed by the ICAEW and that “all [his] financial obligations with ICAEW” had been “cleared”, when, as of 6 December 2019, of the £3000 fine and costs of £10000 imposed by the Disciplinary Tribunal on 15 August 2018, only £2170 had been repaid. This statement was made dishonestly, in breach of rule 2.1 and 2.2.1, in that Mr Bugden knew at the time of making it that it was inaccurate.*

## **Application to Amend**

17. At the outset of the hearing Mr Mills, on behalf of the TDB, made an application for the allegation to be amended.

18. Mr Mills invited the Tribunal to:

- i. Delete Charge 1.1(b), as originally drafted, on the basis that the Appeal Tribunal decision did not amount to a new instance of ‘disciplinary action’, but a continuation of the action referred to in Charge 1.1(a).
- ii. Amend Charge 2.1 to delete reference to 1.1(a) and rely only on 1.1(c) as the complaint made to the TDB regarding The Respondent’s ICAEW disciplinary hearing in 2013 appears to have been made more than 24 months after the Complainant was aware of the outcome and the exceptions in Rule 3.3 of the Taxation Disciplinary Board Scheme Regulations 2014 (TDBRS) have not been applied. Rule 3.3 states that:

*“No complaint, inquiry or information shall be considered where it is lodged in excess of 24 months after the last incident relied on or in excess of 24 months from when that last incident became known to the Complainant, unless in the opinion of the Reviewer:*

- a. *there are issues of such public interest that pursuing the Complaint is appropriate;*
- b. *the Complaint raised is of sufficient importance or gravity that pursuing the Complaint is appropriate; or*
- c. *there is a valid reason for the delay in the Complaint being brought to the attention of the TDB.*

19. The Respondent had been put on notice of the application to amend in Mr Mills' Opening Note dated 4 June 2020. The Respondent confirmed in response to the oral application that he did not object to the proposed amendments.

20. The Tribunal was satisfied that the proposed changes did not materially alter the substance or meaning of the allegation as originally drafted. The Tribunal was also satisfied that no injustice would be caused by making the proposed amendments as they limit the scope of the inquiry and more accurately reflect the TDB's case.

### **Response to the Charges**

21. The Respondent completed a Response Form which is signed and dated 21 May 2020. On that form he indicated that he accepted Charge 1.1 but did not accept the remaining charges. At the outset of the hearing the Respondent formally admitted Charge 1.1 and formally denied Charges 1.2, 1.3, 2.1(a), 2.1(b) and 3.

### **Factual Findings**

#### **Tribunal's Approach**

22. The Tribunal was aware that the burden of proving the facts was on the TDB. The Respondent did not have to prove anything, and the individual charges of the allegation could only be found proved, if the Tribunal was satisfied, on the balance of probabilities.

23. The Respondent chose not to give evidence. In reaching a determination of the facts the Tribunal took into account the documentary evidence and the submissions made by both parties.

#### **Charge 1.1(a) and (b) 'did not inform the CIOT promptly' - Found Proved**

24. The Respondent admitted Charge 1.1 in its entirety. In doing so, he accepted that he was obliged to inform the CIOT promptly of disciplinary action "*begun against him*" by the ICAEW in accordance with Rule 2.10.1 of the PRPG 2011.

25. Rule 2.10.1 refers to disciplinary action "*begun against*" a member. The Tribunal noted that disciplinary action must have begun against the Respondent prior to the 2013 and

2018 ICAEW decisions. However, the Tribunal accepted the date of those decisions is a convenient point to adopt for the purposes of identifying the date from which the Respondent was required to inform the CIOT, promptly.

26. The Respondent did not inform the CIOT of these matters. The only reference to ICAEW disciplinary matters was in an annual return submitted by the Respondent to the CIOT on 4 August 2017. The form requests details in respect of “*disciplinary action by a professional body or regulatory authority*” to which the Respondent simply stated “ICAEW”. The Tribunal was informed that the 2017 form appears to be the first time that the question about whether a member had any disciplinary history with other regulators was asked.
27. Based on the Respondent’s admission and the documentary evidence the Tribunal found Charge 1.1(a) and (b) proved.

#### Charge 1.2 ‘acted dishonestly in not informing the CIOT’ - Found Not Proved

28. It was submitted on behalf of the TDB that the Respondent acted dishonestly in that he knew he was required to inform the CIOT of the disciplinary action, and intentionally failed to do so. The TDB invited the Tribunal to infer that the Respondent was aware of his obligation to inform the CIOT but chose not to.
29. The Respondent informed the Tribunal that he was unaware of the obligation to inform the CIOT that disciplinary action had been taken against him by the ICAEW.
30. The Tribunal noted that, in accordance with the PRPG, there was no dispute that the Respondent was under an obligation to notify the CIOT of the disciplinary action. The Tribunal accepted that if the Respondent had considered the PRPG he could have been in no doubt as to his obligation to inform the CIOT. Although as a registered member of the CIOT the Respondent ought to have been aware of his professional obligations to self-report disciplinary action taken by another regulator, there was no evidence before the Tribunal that the Respondent was aware of the obligation and deliberately chose to disregard it. The Tribunal did not accept that the Respondent must have realised that the CIOT would wish to be informed that he had been disciplined by the ICAEW on the basis that they regulate similar professions. Nor did the Tribunal accept the submission, made on behalf of the TDB, that the absence of an explanation as to why there was no notification, either in the Respondent’s first reply to the TDB (which related only to the 2018 matter) or in his response form supported an inference that he was aware of the obligation. Furthermore, although the Respondent plainly considers that the 2013 decision was unfair or unjustified, the Tribunal concluded that his perception of the decision was insufficient to justify an inference that he made a deliberate decision not to disclose it.
31. The Tribunal concluded that the TDB had adduced insufficient evidence to support a finding that the Respondent realised that he would be at risk of further disciplinary action

from the CIOT and therefore deliberately chose to not to disclose this information. As a consequence Charge 1.2 was found not proved.

Charge 1.3 (a) ‘brought discredit on the profession and/or amounted to [the Respondent conducting his practice improperly or negligently]’ - Found Not Proved

32. The TDB submitted that even if the Tribunal found that the Respondent was unaware of his obligation to inform the CIOT of the disciplinary action taken by the ICAEW that failure brought discredit to the profession and amounted to improper or negligent practice. The basis for this submission was that the Respondent ought to have known that he was required to make the relevant disclosures.

33. As stated in paragraph 30 above, the Tribunal accepted that the Respondent ought to have known that he was required to inform the CIOT promptly. Having concluded that there was no evidence of dishonesty the Tribunal took the view that it was possible that the Respondent simply did not apply his mind to the notification requirement. The Tribunal accepted that this fell short of the standard of conduct and behaviour of a registered CIOT member. However, the Tribunal concluded that a genuine mistake was not sufficiently serious to be characterised as bringing ‘discredit’ to the profession. Nor could it properly be described as practise which is improper or negligent.

34. In these circumstances, Charge 1.3(a) was found not proved.

Charge 1.3 (b) ‘brought disrepute’ - Found Not Proved

35. The Tribunal took into account its findings in relation to Charge 1.3(a) and for the same reasons found that the TDB had not proved that the Respondent’s actions had brought the profession into disrepute.

Charge 2.1 (a) and (b) “failed to avoid action which discredits the profession and brought CIOT into disrepute” - Found Proved

36. The TDB submitted that the fact, and circumstances, of the ICAEW’s findings against Respondent brought the CIOT into disrepute and means that he failed to avoid any action which discredits the profession. The TDB did not rely on the underlying facts of the 2018 decision but on the fact that the ICAEW reprimanded the Respondent for his conduct and behaviour.

37. The Tribunal took into account the nature of the adverse findings made by the ICAEW and noted that the penalty imposed was towards the lower end of the spectrum of available sanctions. However, the Tribunal also noted that the 2018 disciplinary tribunal



concluded that the Respondent's behaviour was not an isolated incident but a continuing course of conduct and that he had demonstrated a lack of insight and competence.

38. In these circumstances, the Tribunal concluded that the Respondent had brought the CIOT into disrepute and had failed to avoid any action which discredits the profession.

**Charge 3 “dishonest statement at the TDB Interim Order Panel Hearing” – Found Proved**

39. At the time of the TDB Interim Order Panel hearing (“the hearing”) on 6 December 2019, the Respondent had not fully paid the ICAEW in respect of the orders made in 2018. As of 11 December 2019, the Respondent owed ICAEW £10,830. During the hearing in response to the questions from the Panel, “*so the fines have been paid and all your financial obligations with ICAEW are cleared*” the Respondent stated “*cleared, yes*”. When asked by the Panel whether “*the fines have been paid?*”, he stated “*oh yes*”.

40. The Respondent informed the Tribunal that during this verbal exchange he was referring to the 2013 financial penalties and not the financial penalties imposed by the ICAEW in 2018. The Tribunal did not accept this. The Tribunal, having considered the extract from the transcript, was satisfied that the question asked by the Panel was broad and clearly included all monies owed to ICAEW. The Respondent knew that he owed ICAEW in excess of £10,000 and therefore he also knew that the statement he made to the Panel was inaccurate. The Tribunal took the view that the Respondent's inaccurate statement was a deliberate attempt to mislead the Panel. The Tribunal was satisfied that by the ordinary standards of reasonable and honest people deliberately making an inaccurate statement is dishonest.

41. For these reasons Charge 3 was found proved.

**Sanction**

42. Having found Charges 1.1, 2.1 and 3 proved in their entirety, the Tribunal went on to consider mitigation and sanction. In considering what sanction (if any) to impose, the Tribunal had regard to the Indicative Sanctions Guidance (ISG). It also had regard to the principle of proportionality and the principle that any sanction imposed should be the least onerous measure that adequately meets the seriousness of the findings of fact.

43. The Tribunal took into account the following aggravating factors:

- The Respondent has not demonstrated any meaningful insight into the impact of the ICAEW's findings on his standing as a CIOT member and on the wider profession as a whole;
- The Respondent's conduct and behaviour relates to multiple issues.

44. The Tribunal identified the following mitigating factors:

- The positive references and testimonials which attest to the Respondent's skills and competence as an accountant and tax adviser;
- The absence of any financial loss to clients;
- The Respondent's partial admissions.

45. The Tribunal first considered taking no action. The Tribunal concluded that, in view of the nature and seriousness of the Respondent's conduct and behaviour, which includes a finding of dishonesty, and in the absence of exceptional circumstances, it would be inappropriate to take no action. For the same reasons the Tribunal concluded that it would not be appropriate to make an order that the findings 'rest on the file.'

46. The Tribunal then considered a Warning. The Panel noted that the ISG states:

*'A warning may be appropriate where the conduct is at the lower end of the spectrum, but the Tribunal nevertheless wishes to indicate that the behaviour was unacceptable.'*

47. The Tribunal took the view that the Respondent's behaviour could not be described as minor in nature and concluded a Warning would be insufficient to mark the seriousness of his acts and omissions. The Tribunal noted that at no stage did the Respondent demonstrate adequate acknowledgement of his wrongdoing, and the impact of his behaviour on his professional standing as a member of CIOT and the wider profession. In the absence of sufficient insight the Tribunal concluded that there was a risk of repetition. Furthermore, the Panel took the view that the Respondent's conduct could not be described as an isolated incident which may justify a sanction towards the lower end of the spectrum. Therefore, the Tribunal concluded that a Warning was not an appropriate sanction as it would be insufficient to maintain public confidence in the regulatory process and uphold the reputation of the profession.

48. The Tribunal noted that no client or member of the public had been directly affected by the Respondent's acts and omissions and therefore it concluded that a formal written apology would not be appropriate.

49. The Tribunal consider imposing a financial penalty. The Tribunal concluded that imposing a fine alone would be purely punitive and would not adequately address the Tribunal's concern regarding public trust and confidence in the profession. The Panel also concluded that a fine in combination with another sanction would not adequately address the wider public interest and therefore would serve no useful purpose.

50. The Tribunal went on to consider Censure and noted that the ISG states that it:

*'...is appropriate where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Tribunal that there is no continuing risk to the public, and there is evidence of the member's understanding and appreciation of the conduct which has been found proved. A censure will be appropriate where a Tribunal considers that the misconduct is unlikely to be repeated in the future.'*

51. The Tribunal took the view that the Respondent's conduct and behaviour was serious. However, it concluded that there were no particular circumstances which indicated that Censure would satisfy the wider public interest in terms of declaring and upholding proper standards or maintaining public confidence in the profession. In reaching this conclusion the Tribunal took into account the Respondent's lack of insight and the ongoing risk of repetition.
52. The Tribunal took the view that the Respondent's conduct is not amenable to conditions as the basis for the underlying behaviour is an attitudinal failing. The Tribunal was unable to formulate conditions which would be workable, measurable or proportionate. Furthermore, conditions would not adequately address the serious nature of the Respondent's actions and would seriously undermine public confidence in the profession, the TDB as a regulator and the need to uphold high standards of conduct and behaviour.
53. The Panel next considered a Suspension Order. The public and the profession are entitled to expect a member of the profession to uphold the highest standards of trust, confidence and behaviour. The Tribunal determined that the behaviour underlying the Respondent's conduct is capable of being remedied provided that he is willing to engage in meaningful reflection and take steps to demonstrate that such behaviour is firmly in the past and will not be repeated. The Tribunal took the view that a Suspension Order would send a signal to the Respondent, the profession and the public re-affirming the standards expected of a member of CIOT. The Tribunal was mindful that a finding of dishonesty does not necessarily indicate that the member should be expelled as each case must be considered on its merits.
54. In these circumstances, the Tribunal determined that a 12-month Suspension Order would be sufficient to maintain public trust in the profession and the regulatory process and would have a deterrent effect on other members. In determining the length of the Order the Tribunal was satisfied that this period would be sufficient to mark the seriousness of the Respondent's behaviour whilst providing him with the opportunity to reflect on this Tribunal's decision and the findings made by the ICAEW. The Tribunal concluded that Expulsion, would be punitive and disproportionate.

## **Costs**

55. The Tribunal considered the TDB's application for costs in the sum of £4,446.50, as set out in the updated schedule of estimated costs, served on the Respondent during the hearing. The Tribunal also considered the Respondent's financial circumstances.
56. The Tribunal was satisfied that the costs were reasonably incurred and that it is appropriate for the Respondent to contribute to the costs of bringing the case subject to a reduction of 25% to reflect the fact that not all of the charges were found proved. The Tribunal determined that the Respondent should be required to make a contribution of £3,349.92 towards the TDB's costs, otherwise the costs of bringing these proceedings would be borne solely by the profession as a whole.

## **Publication**

57. The Tribunal was unable to identify any reason for departing from the presumption in favour of publication. Part of the role of the Tribunal is to uphold the reputation of the profession, and publication of its decisions is an essential part of that duty.
58. The Tribunal orders that this decision be published in the Tax Adviser Journal and on the TDB website.

Signature

*Margaret Ohi*

Chair

Date of signature of Decision

19 June 2020