

**THE DISCIPLINARY TRIBUNAL**  
**OF THE TAXATION DISCIPLINARY BOARD**

**TDB/2019/11**

**TAXATION DISCIPLINARY BOARD**  
**(TDB)**

**v**

**MR DANIEL SHAW**  
**(Membership Number 217126)**

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**DECISION**  
**(19/8/2020)**

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**INTRODUCTION:**

1. The Disciplinary Tribunal of the Taxation Disciplinary Board sat remotely on Wednesday August 19<sup>th</sup> 2020. The hearing was chaired by Mr Peter Cadman, solicitor who was sitting with Ms Manuela Grayson (lay member) and Mr David Hards (CIOT member).
2. Mr Alex Mills, counsel, represented the TDB. Mr. Shaw was not present nor represented. Mr. Bremner, Clerk to the TDB's Disciplinary Tribunal, and Fiona Herson, executive assistant to the TDB, were also present.
3. The Proceedings against Mr. Shaw had been listed for hearing on February 27<sup>th</sup> 2020 but that Tribunal had decided not to proceed on that date after Mr Shaw had informed the TDB that he wanted to participate but was out of the country. This Tribunal was provided with the written reasons for that decision.

**SERVICE:**

4. Mr Mills invited the Tribunal to conclude that there had been valid service of notice of the hearing. He went through the chronology of communication from the TDB to Mr. Shaw. He drew the Tribunal's attention to the absence of a set notice period for adjourned hearings in the Taxation Disciplinary Scheme Regulations 2014. He

reminded the Tribunal that the notice period for an ordinary hearing is 28 days and suggested that the notice period should be fair.

5. The Panel noted that a letter to Mr Shaw notifying him of this hearing date of August 19<sup>th</sup> 2020 was sent on July 24<sup>th</sup> 2020 to his address on the Register but had been returned “incorrect address”. It appears from correspondence from Mr Shaw that his correct address includes “Apt 30” but that apartment number was not on the Register although the rest of the address and the postcode were identical. However, in addition emails had been to his email addresses by the TDB also notifying of the hearing date of August 19<sup>th</sup> 2020. These had been sent on July 21<sup>st</sup> and July 22<sup>nd</sup> 2020.
6. The Tribunal was satisfied that the notice of this hearing had been fair in that Mr Shaw had been notified by post to the address on the Register, as required by the Regulations, and he had also been sent emails to two email addresses known to the TDB.

#### **PROCEEDING IN MR. SHAW’S ABSENCE:**

7. Mr Mills on behalf of the TDB applied for the matter to proceed in the absence of Mr. Shaw. He drew the Tribunal’s attention to the relevant case law and in particular the case of GMC –v- Adeogba. He drew the attention of the Tribunal to the limited engagement of Mr Shaw with CIOT and with TDB. He had engaged shortly before the hearing on February 27<sup>th</sup> 2020 and at his request the proceedings had been adjourned. He had not engaged with TDB since that date.
8. The Tribunal bore in mind the right of Mr Shaw to participate in these proceedings and considered Mr Mills’ application with the utmost care and caution. It had to balance the rights of a member to participate with the public interest in the fair, economical, expeditious and efficient disposal of allegations made against members of a profession. In the circumstances of this case the Tribunal bore in mind the limited engagement of Mr Shaw in the process until shortly before the hearing on February 27<sup>th</sup> 2020 and his total lack of engagement since that date. There was no reason to believe that a further adjournment would secure his attendance. In exercising its discretion the Tribunal decided that the public interest in proceeding outweighed Mr Shaw’s right to participate. The Tribunal ruled that the case should proceed in his absence.

#### **CONTESTED MATTERS:**

9. Mr Shaw had not responded to the allegations and faced the following charges:

#### **SCHEDULE OF CHARGES**

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 2018”), in force from 8 November 2018:

- (1) 2.1 and 2.2.1 (integrity);
- (2) 2.1 and 2.6.1 (professional behaviour);
- (3) 2.13.2 and 2.13.3 (obligation to reply to correspondence from the TDB).

## 1. Charge 1

- 1.1 On 16/01/2019 Mr Shaw made a false representation to his employer by sending an email containing a forged statement of examination results, which:
  - (a) represented that he passed his examination in Awareness sat in November 2018, when he had not;
  - (b) represented that his mark for his examination in Taxation of Major Corporates sat in November 2018 was '46', when in fact it was '41'.
- 1.2 At the time of sending the email referred to in charge 1.1, Mr Shaw knew that he was making a false representation.
- 1.3 On or before 16/01/2019 Mr Shaw created the forged statement of examination results referred to in Charge 1.1.
- 1.4 Mr Shaw acted in breach of rule 2.1 and 2.2.1 (integrity) in that his making of the false statement and/or creating the forged statement of examination results was dishonest.
- 1.5 Mr Shaw acted in breach of rule 2.1 and 2.6.3 in that:
  - (a) his actions discredit the profession;
  - (b) he conducted his professional work and/or the duties of his employment improperly to such an extent as to be likely to bring discredit on himself, the CIOT, or to the tax profession.


## 2. Charge 2

- 2.1 Mr Shaw failed to respond to correspondence from the TDB without unreasonable delay or at all, namely:
  - (a) An email sent 8.4.19 to his address registered with the CIOT;
  - (b) A voicemail left on 13.5.19 on his mobile phone number registered with the CIOT.


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10. Mr Mills applied for amendment to the Charges namely that the reference to Professional Rules and Guidance "2011" be amended to refer to "2018" and that the reference to in force from "8" November 2018 be amended to "9" November 2018. The Tribunal allowed the amendment and considered that such amendments did not prejudice Mr Shaw.

11. Mr Mills drew the Tribunal's attention to material within the hearing bundle. Mr Shaw had taken exams in November 2018 and received the results of those exams by email of January 16<sup>th</sup> at 08.39. The actual results as provided to him were

CTA Examination Results		November 2018	
			
Candidate Number: <b>11566</b>			
Student Number: <b>217126</b>			
Dear Mr Shaw			
Following the November 2018 examination of the Chartered Institute of Taxation your candidate status is as follows:			
	<b>Grade</b>	<b>Mark/%</b>	
<b>Advisory</b>			
Taxation of Major Corporates (Previously called Advanced Corporation Tax)	Fail	41	
<b>Awareness</b>			
A: VAT and Stamp Taxes	Fail	33	
B: Inheritance Tax, Trusts & Estates		6	
D: Taxation of Individuals		25	
		29	
<b>Computer Based Examinations</b>			
Professional Responsibilities & Ethics	Pass		
Law	Pass		
Overall Status	Incomplete		

12. However, by email sent by Mr Shaw on the same day at 09.48 to his employers the results had been changes and purported to be:

CTA Examination Results		November 2018	
			
Candidate Number: <b>11566</b>			
Student Number: <b>217126</b>			
Dear Mr Shaw			
Following the November 2018 examination of the Chartered Institute of Taxation your candidate status is as follows:			
	<b>Grade</b>	<b>Mark/%</b>	
<b>Advisory</b>			
Taxation of Major Corporates (Previously called Advanced Corporation Tax)	Fail	46	
<b>Awareness</b>			
A: VAT and Stamp Taxes	Pass	64	
B: Inheritance Tax, Trusts & Estates		25	
D: Taxation of Individuals		35	
		49	
<b>Computer Based Examinations</b>			
Professional Responsibilities & Ethics	Pass		
Law	Pass		
Overall Status	Incomplete		

13. The matter came to light because the examiners independently sent the correct exam results directly to Mr Shaw's employers. The employers conducted a disciplinary process and Mr Shaw was dismissed. Within the papers, in Mr Shaw's letter of March 30<sup>th</sup> 2019, he refers to there being an appeal process between him and his previous employers. The Tribunal note that in his application to adjourn the hearing on February 27<sup>th</sup> 2020 he makes no reference to an appeal and it is likely that any appeal will have been concluded. The Tribunal were quite properly invited by Mr Mills to disregard any decision of his employers and the Tribunal did so.
14. The Tribunal reminded itself that the matters had to be determined on the balance of probabilities and that the burden of proof was on the TDB to prove its case. The Tribunal bore in mind that Mr Shaw was a man of good character.
15. The Tribunal was, however, satisfied on the clear evidence before it that:
  - (a) Mr Shaw had received his exam results namely that he had failed his examination in Awareness and that his mark for his examination in Taxation of Major Corporates was 41. This was received by him on January 16<sup>th</sup> at 08.39.
  - (b) Mr Shaw had sent his employers an email on the same day at 09.48 with the email that he had received altered by him to purport that he had passed Awareness with a mark of 64 and his failure in Taxation of Major Corporates was with a mark of 46 not the correct mark of 41.
16. (a) In the light of these findings of fact the Tribunal found Charges 1.1, 1.2 and 1.3 proved.
  - (b) It also found that such actions were in breach of rule 2.1 and 2.2,1( integrity ) and therefore Charge 1.4 was also proved. The Tribunal found that his actions were dishonest in creating the forged exam result and then sending it to his employer representing it as the true and correct results.
  - (c) The Tribunal also found that Charge 1.5 was proved. Such dishonest action had discredited the profession and had brought discredit on himself, the CIOT and the tax profession.
  - (d) The Tribunal also found Charge 2 proved. Mr Shaw had failed to comply with his duty to respond to TDB.

**SANCTION:**

17. The Tribunal had regard to the indicative sanctions guidance of the Taxation Disciplinary Board when reaching its determination as to sanction. The Tribunal reminded itself that the purpose of any sanction was not to punish a member but to protect the public, uphold the proper standards of conduct in the profession and maintaining the reputation of the profession.
18. The Tribunal noted that Mr Shaw was a man of good character who had lost his job as a result of his actions. This was an isolated action in the sense that the main events took place over a short period of time. The Panel reminded itself that it must start at

the lowest sanction when determining the appropriate sanction in any case. This case, however, involved dishonesty including the creation of a forged document that he presented to his employers and which was intended to mislead them. Had the employers relied on those “results” Mr Shaw might have been given tasks beyond his ability and thereby could have created g risks for clients and the public. The Tribunal, when deciding on sanction, bore in mind the particular acts of dishonesty of Mr Shaw.

19. The Tribunal concluded that no penalty other than recommending Mr Shaw’s removal from the student register would be appropriate and sufficient to protect the public, maintain the reputation of the profession, and uphold the proper standards of conduct in the profession.
  
20. There was a costs application made by TDB in the sum of £4356.65 including the adjourned hearing on February 27<sup>th</sup> 2020. The Tribunal took into account the TDB guidance on awarding costs. The Tribunal was aware that as a result of his actions Mr Shaw had lost his job in 2019. However, Mr Shaw had not engaged in these proceedings and the Tribunal had no information as to his financial circumstances. In the circumstances the Tribunal ordered that Mr Shaw should pay the full costs in the sum of £4356.65.
  
21. The Tribunal also ordered that the matter be publicised in the ordinary way in accordance with Regulation 28.1.

PETER CADMAN

(Chairman)