

**TAXATION DISCIPLINARY BOARD**

**- and -**

**MR THOMAS BYNG**  
**(Membership Number CIOT 163265)**

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**DECISION**  
**(23.4.2021)**

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**INTRODUCTION:**

1. The Disciplinary Tribunal ('the Tribunal') sat on 23 April 2021 to hear charges brought by the Taxation Disciplinary Board ('TDB') against Mr Thomas Byng. The hearing was conducted remotely by video conferencing. The Tribunal was chaired by Mr Andrew Granville Stafford (barrister) who was sitting with Mrs Janet Wilkins CTA (CIOT member) and Ms Gill Hawken (lay member). The Clerk to the Tribunal was Mr Nigel Bremner.
2. Neither Mr Byng nor the Presenter were present. As Mr Byng had admitted the charges against him in writing, the matter was heard pursuant to the simplified procedure in regulation 15 of the Taxation Disciplinary Scheme Regulations 2014 ('the Disciplinary Regulations').
3. The Tribunal was provided with the following documents:

Case summary, document index and schedule prepared for the Investigation Committee;

Mr Byng's Response Form and Written Representations;

Case summary prepared by the Presenter;

Additional papers containing emails between Mr Byng and the Clerk between 12 February 2021 and 20 April 2021.

**PROCEEDING IN ABSENCE:**

4. The charge and accompanying documents were sent to Mr Byng on 12 February 2021. Mr Byng stated in his Response Form, dated 22 February 2021, and his Written Representations accompanying that form that he wished the matter to be dealt with without an oral hearing.
5. By email dated 25 February 2021 Mr Byng confirmed that he was content to waive his right to the normal 28 days' period of notice of the hearing. On 20 April 2021 Mr Byng was informed that the matter would be dealt with today. Mr Byng replied the same day confirming he was content for the matter to go ahead in his absence.
6. The Tribunal was satisfied that the requirements of the Disciplinary Regulations as to notice had been met. The Tribunal noted that under Regulation 14.1 the period of notice of the hearing may be less than 28 days with the agreement of the Defendant.
7. The Tribunal was further satisfied it should exercise its discretion to proceed in Mr Byng's absence. He had admitted the charges and specifically requested the matter be dealt with on the papers. He was aware of the hearing and had consented to it going ahead in his absence. He had provided Written Representations for the Tribunal to take into account and it was clear to the Tribunal from those representations that he fully understood the nature of this hearing and the powers available to the Tribunal.
8. In all the circumstances the Tribunal considered that no useful purpose would be served by an adjournment and there was a clear public interest in dealing with the matter expeditiously given the serious nature of the allegations.

**CHARGES:**

The charges set out below refer to the following rules of the Professional Rules and Practice Guidelines 2018 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:

2.1 and 2.6.3 (professional behaviour)

are as follows:

#### Charge 1

1. In a settlement order with the Institute of Chartered Accountants of England and Wales ('ICAEW') published 20 February 2020 Mr Byng admitted two complaints of dishonest conduct, and agreed to be excluded from membership of ICAEW. By reason of the fact and/or circumstances of his exclusion from ICAEW, Mr Byng:

- a. Failed to avoid any action that discredits the profession (rule 2.1);
- b. Conducted himself in an unbecoming manner, which tends to bring discredit upon himself, and/or may harm, the standing of the profession, and/or the CIOT (rule 2.6.3).

#### **RESPONSE TO CHARGES**

9. In his Response Form signed and dated 22 February 2021, Mr Byng admitted both charge 1.1(a) and charge 1.1(b).

#### **BACKGROUND:**

10. Mr Byng is a member of the CIOT. He was at the material dates also a member of the Institute of Chartered Accountants of England and Wales ('ICAEW').
11. On 24 September 2018 Mr Byng reported himself to the ICAEW for ethical breaches relating to the submission of two tax credit claims. Following an investigation, Mr Byng entered into a settlement agreement with the ICAEW. The terms of the agreement were as follows:

'1. The Respondent [Mr Byng] admits Complaints 1A and 2A, namely:

- 1A. In or around April 2018, Thomas Byng FCA backdated or caused to be backdated a Research & Development Expenditure Credit claim for the year ended 31 December 2015 in respect of company G, which was submitted to HMRC purporting to have been originally submitted in December 2017,

This conduct was dishonest because he knew the claim had not originally been submitted in December 2017

- 2A In or around June 2018, Thomas Byng FCA backdated or caused to be backdated a Research & Development Expenditure Credit claim for the year ended 31 December 2015 in respect of company W, which was submitted to HMRC purporting to have been originally submitted in December 2017.

This conduct was dishonest because he knew the claim had not originally been submitted in December 2017.

2. The Applicant [ICAEW] shall not proceed with Complaints 1B and 2B.
  3. The Respondent agrees to being EXCLUDED from ICAEW membership forthwith by virtue of the above admissions.
  4. The Respondent shall pay the Applicant's agreed Costs in the sum of £5,900 within 35 days of the Settlement Agreement Chair approving this Settlement Order.
  5. Publication of this matter shall be in accordance with Disciplinary Bye-law 35.1.'
12. The background to those admissions is as follows. In 2013 Mr Byng joined an accountancy firm, 'M' LLP ('the firm'). His background was in corporation tax. At the relevant time he was an equity partner in the firm.
  13. Complaint 1A concerns a claim for Research and Development ('R&D') tax credit made by the firm on behalf of its client, 'G' Ltd. The claim was for the period to 31 December 2015. The claim had to be submitted to HMRC no later than the end of 2017. However, the firm missed the deadline. When this mistake came to the attention of Mr Byng in April 2018 he caused or permitted the firm to submit a claim for the credit to HMRC, falsely backdated to make it appear as though it had been submitted in December 2017.
  14. Complaint 2A relates to a similar claim made on behalf of another client, 'W' Ltd. Mr Byng was not 'W' Ltd's client partner but was engaged to prepare and submit an R&D

claim to HMRC for the 31 December 2015 and 2016 year ends. The last date for the filing the 2015 claim was 31 December 2017. It appears that the claim was prepared but not submitted on time. At some date Mr Byng was alerted to the error and, as with 'G' Ltd's claim, caused a backdated letter to be sent to HMRC. The letter was submitted in June 2018 but dated 22 December 2017.

15. The matter came to the attention of the Management Board of the firm who carried out an investigation. Mr Byng admitted backdating or instructing a more junior member of staff to backdate the claims in question. He tendered his resignation from the firm and left with effect from 30 September 2018.
16. In his self-report to the ICAEW he said that it had transpired in March 2018 that a claim for one of the firm's clients had not been submitted prior to 31 December 2017, and as such the client had lost out on a claim for circa £17,000. He said he was instructed by a more senior partner to prepare the letter that should have been sent but to date it December 2017.
17. He said that in April 2018 he was asked about whether a claim for circa £47,000 for a different client had been submitted. No record could be found of it being sent to HMRC and, though HMRC initially indicated it had been received, the firm was informed by the Revenue in June that it had not. Mr Byng said that, following the advice he previously received, a backdated letter was created.
18. Mr Byng said in his self-report to the ICAEW that there was no excuse for his actions and he sincerely apologised for them. The ICAEW's investigation resulted in the settlement order set out above. Mr Byng asked the ICAEW to notify the CIOT of the settlement order on 12 February 2020.
19. On 1 May 2020 Mr Byng was formally notified of the complaint by the TDB. Mr Byng replied by letter on 20 May 2020 in which he accepted that his actions brought discredit on himself contrary to Rule 2.6.3 of the PRPG.

**DECISION:**

20. Charge 1.1(a) was brought under Rule 2.1 of the PRPG which requires a member to comply with the fundamental principles. These include the fundamental principle of

professional behaviour which requires a member to comply with relevant laws and avoid any action that discredits the profession. The TDB's case was that it discredits the profession for a tax professional to be excluded from membership of a professional body for two instances of dishonest conduct in respect of his tax practice.

21. Charge 1.2(a) was brought under Rule 2.6.3 of the PRPG. This requires a member not to conduct themselves in an unbecoming manner which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT. The TDB's case was that by reason of his exclusion from the ICAEW for dishonesty in respect of his tax practice he had conducted himself in a manner unbecoming a member.
22. The Tribunal noted that Mr Byng had admitted the charges both in his Response Form and his Written Representations. It was satisfied that Mr Byng had made clear and unequivocal admissions to both charges and that those admissions were appropriate in the light of the evidence before the Tribunal. It therefore found the charge 1.1(a) and 1.1(b) proved on the basis of Mr Byng's admissions.

**SANCTION:**

23. In determining what, if any, sanction to impose the Tribunal had regard to the Indicative Sanctions Guidance ('ISG'),
24. 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.
25. 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.
26. The Tribunal had regard to the written representations submitted by Mr Byng. He apologised for his conduct and advanced the following matters as mitigation.
  - (a) There was no personal gain associated with his misconduct.
  - (b) The two incidents occurred within a short period of time.

(c) No third party suffered loss as a result. The backdated claims were subsequently withdrawn by the firm and they fully compensated the clients who lost out on the relief as a result of missing the deadlines.

(d) He assured the TDB that he has complete insight into his misconduct. He accepted that what he did was wrong, he self-reported to the ICAEW and resigned as a partner from the firm. He had admitted dishonesty to the ICAEW and now to the TDB.

(e) He is no longer working for the firm by which he was employed and was a partner at the time of the misconduct. He said the consequences for his career and family have been very serious.

(f) He said he had been penalised already by the ICAEW by being expelled from that association and that he accepted he will now be expelled from the CIOT.

(g) Aside from this matter, he does not have any previous disciplinary record.

27. The Tribunal took all the above matters into consideration. The Tribunal considered that, whilst acting for personal gain or causing loss to another could amount to aggravating factors, the lack of personal gain or loss to a third party were not truly mitigating factors. Similarly, whilst the fact that the conduct had been repeated was an aggravating factor, the period over which it had been repeated was not mitigation. The Tribunal noted the effect these matters had had on Mr Byng both personally and professionally but those weigh low in the scales of mitigation given that the purpose of a sanction is to protect the public. The Tribunal accepted that Mr Byng had made full and early admissions and that this demonstrated insight into his misconduct. It also took into account the fact that there had been no previous disciplinary findings against him.
28. The Tribunal considered that the charges were aggravated by the underlying conduct, which was an attempt to commit a fraud on the public purse involving substantial sums of money. The fact that the conduct was deliberate and had been repeated were aggravating factors, as was the fact that the misconduct was committed in a professional capacity and whilst Mr Byng occupied a position of trust and responsibility as a partner in an accountancy firm.

29. The Tribunal had regard to the guidance in the ISG. Where there has been an adverse finding by another professional body and the underlying conduct involves dishonesty, the guideline sanction is expulsion. The Tribunal bore in mind that, in accordance with its duty to only impose a sanction which was appropriate and proportionate in all the circumstances of the case, it was not bound to impose the guideline sanction. It therefore considered the available options from the bottom upwards.
30. The Tribunal considered that imposing no sanction or allowing the matter to rest on file would not appropriately mark the nature of Mr Byng's misconduct. Further, requiring an apology would not be appropriate in light of the nature of the charges.
31. In view of the seriousness of the charges found proved and the aggravating factors identified above, the Tribunal was of the view that neither a warning nor censure were appropriate sanctions. Neither would adequately reflect the gravity of the conduct in this case; nor would they properly protect the public interest. The Tribunal noted in particular that the conduct in question was deliberate and was not a single incident.
32. The Tribunal considered that imposing conditions on Mr Byng was not appropriate in a case involving serious dishonesty.
33. The Tribunal next considered a suspension order. In general a suspension is appropriate where the conduct is sufficiently serious as to require temporary expulsion, but not so serious as to require permanent expulsion. The Tribunal was not satisfied, having regard in particular to the guidance in the ISG, that temporary expulsion was an appropriate or proportionate sanction.
34. The ISG states 'Expulsion is the most serious sanction available. It will be appropriate where this is the only means of protecting the public and/or the conduct is so serious as to undermine confidence in the profession if a lesser sanction were to be imposed'. The Tribunal was of the view that two deliberate attempts to make falsified claims to HMRC committed by a member in his professional capacity, and whilst occupying a position of some seniority in his firm, were so serious that the public interest could not be served by any sanction below that of expulsion. This was a serious departure from proper professional standards involving dishonesty and there was no basis on which the Tribunal could depart from the guideline sanction of expulsion.



35. The Tribunal considered whether to additionally impose a financial penalty but considered that to do so would be punitive.
36. Therefore, the Tribunal ordered that Mr Byng be expelled from the membership of CIOT. The Tribunal did not consider it was appropriate to specify a period of expulsion.

#### **COSTS:**

37. The TDB applied for costs in the sum of £2,045. Mr Byng had been sent a copy of the costs schedule on 20 April 2021 and given the opportunity to make representations. He had not made any representations nor supplied any information about his means.
38. 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. 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.

#### **PUBLICITY:**

39. 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.
40. The Guidance on the Publication of Disciplinary and Appeal Findings 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 and directed that this decision be published in accordance with the Guidance.
41. 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**

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



**Andrew Granville Stafford**  
**(Chair)**  
**23.4.2021**