

**IN THE MATTER OF THE TAXATION DISCIPLINARY BOARD**

**Reference: TDB/2020/30**

**TAXATION DISCIPLINARY BOARD**

**- and -**

**MR AVISH KUMAR  
(Student No: 227479)**

**Defendant**

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**DECISION AND REASONS**

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**Introduction:**

1. The Disciplinary Tribunal sat on Monday 21 June 2021 to consider charges brought against Avish Kumar (the Defendant). The matter was considered under the simplified procedure pursuant to Regulation 15. The Defendant was not in attendance.
2. The Tribunal was chaired by Linda Lee (solicitor) sitting with Ian Luder (professional member) and Sadia Zouq (lay member). The Clerk to the Tribunal was Nigel Bremner.

**Preliminary matters:**

3. The Tribunal had before it the correspondence and documents as set out in Schedule 1.
4. The Tribunal noted that the Defendant had admitted all charges.

## **Charges:**

5. 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"):

(1) 2.1 The Fundamental Principles of Integrity and Professional Behaviour

(2) 2.2.1 - A member must always be honest in all their professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information.

(3) 2.6.2 - A member must:

- Uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT;
- Take due care in their professional conduct and professional dealings.

(4) 2.6.3 - A member must not:

- Perform their professional work, or conduct their practice or business relationships, or perform the duties of their employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to themselves, to the CIOT or ATT or to the tax profession.
- Breach the Laws of the CIOT or ATT;
- Conduct themselves in an unbecoming, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT or ATT (as the case may be). For the avoidance of doubt, conduct in this

context includes (but is not limited to) conduct as part of a member's personal or private life.

### **Charge 1**

**1.1.** When sitting the ATT Paper 4 Corporate Taxation paper remotely on 3 July 2020, the Defendant collaborated with others and/or copied answers from a study text. **admitted and found proved**

**1.2.** The Defendant knew or should have known at the time of the examination that such conduct was in breach of ATT's Code of Conduct for examinations. **admitted and found proved**

**1.3.** The Defendant falsely declared that the exam was all his own work and that he had sat the exam in accordance with instructions from ATT **admitted and found proved**

**1.4.** The Defendant was dishonest in that on 28 July 2020 he stated to ATT that his exam script was his own work, when on 19 October 2020 he accepted the allegations and stated that it had happened unknowingly. **admitted and found proved**

**1.5** If charges 1.1 and 1.2 and /or 1.3 are proved, the Defendant is in breach of: **(a)** Rules 2.1 and 2.2.1 in that he acted dishonestly, in breach of the fundamental principle of integrity; **admitted and found proved**

**(b)** Rules 2.1 and 2.6.2 and/or 2.6.3 in that he did an act which discredits the profession, in breach of the fundamental principle of professional behaviour in that he failed to:

**(i)** uphold the professional standards of the ATT as set out in the Laws of the CIOT and ATT; **admitted and found proved**

and /or

**(ii)** take due care in his professional conduct and professional dealings;

and /or

**(iii)** performed his professional work improperly or negligently to such an extent as to be likely to bring discredit to himself, to the ATT or to the tax profession; **admitted and found proved**

and/or

**(iv)** conducted himself in an unbecoming or unlawful manner, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the ATT. **admitted and found proved**

### **Background:**

6. The Defendant, an ATT student, sat the ATT Paper 4 Corporate Taxation paper on 3 July 2020. This examination was conducted remotely, and the exam paper was emailed to him at the starting time. The Defendant's candidate number was 00074.
7. During the marking of the long form questions, the examiners noticed some unusual similarities between the scripts of six candidates, and that some of the short form questions bore close similarity to the relevant sections of the Tolley's study text. This was brought to the attention of the Chief Examiner, and then ATT's Director of Education.
8. Initial investigation found that six candidates all worked for the same employer. All six candidates had submitted their exams using "Plan B", i.e. the exam was sent to them by email. All six candidates made a declaration that they had attempted the exam under exam conditions and that the exam was all their own work.
9. The Chief Examiner reviewed the exam scripts of all candidates who worked for the same firm as other candidates to identify whether any candidates had either collaborated with colleagues (i.e. worked together on the exam and produced some identical answers), or had treated the exam as "open book", (i.e. that there was evidence of answers copied from a study text).

10. Sixteen candidates worked for the same firm. From their scripts, six were found to have collaborated. Five of the six also showed examples of treating the exam as “open book”. Of the six candidates, two collaborating groups were identified – one group of four, and one group of two.

11. ATT’s Examination Steering Group identified the following:

i) that the Defendant’s script for Questions 6 and 7 showed the same wording error as the other candidate in this group;

ii) that the Defendant’s script for Questions 14 and 15 showed the same misspelling, typographical errors, capitalisation, and insertion of a random letter as the other candidate in this group;

12. The Defendant initially denied the allegation but then admitted it.

## **Sanction**

13. In deciding on the appropriate sanction, the Tribunal considered the guidance contained in the Taxation Disciplinary Board’s Indicative Sanctions Guidance of December 2020 and also noted the sanctions imposed in other similar cases, as recorded in Annex D to the Indicative Sanctions Guidance. It also reminded itself that it should start by considering the least severe sanction and only consider more serious sanctions if satisfied that the lesser sanction is not appropriate in this case. It also noted that, *‘guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. The guideline may be affected by aggravating and mitigating factors relevant to the allegation(s) and the weight to attach to each, which may increase or decrease the sanction away from the guideline’*.

14. It noted that the purpose of imposing a sanction upon a member, *‘is not simply to discipline the individual or firm for any wrongdoing of which he or it may be culpable, but to protect the public and maintain the reputation of the profession by sending a signal as to how serious the Tribunal judges the conduct to be’*.

15. The Defendant had put forward in mitigation that he was of previous good character, he had apologised and indicated he would not ever behave in this way again. The Tribunal noted that although he initially denied the allegation, when

he was contacted for a second time, he admitted that he had acted in the manner described and that in doing so he had been dishonest. He said however that he had done so 'unknowingly' in the face of last-minute changes to the examination. It was not clear to the Tribunal what was meant by this, but it noted that English was not the Defendant's first language.

16. The Tribunal considered the aggravating and mitigating factors. The Tribunal did not find any aggravating factors. It noted that the Defendant was of previous good character and had shown some insight and remorse.
17. Having considered the evidence, the Tribunal was satisfied that taking no further action, ordering the matter to lie on file or a warning were not appropriate sanctions given the gravity of the charges found proved. The Tribunal noted that public confidence in the integrity of professional examinations and the honesty of members was of high importance to the public and the profession.
18. The Tribunal also felt that the charges were so serious that a censure would not be appropriate. It noted that the Defendant was of good character, and the Tribunal felt it unlikely that there was a risk of repetition in the future, but this had been a deliberate act of dishonesty and a censure would not be sufficient to maintain public confidence.
19. The Tribunal noted that under Regulation 20.6 (f)(x) it could recommend the suspension or removal of the Defendant from the student register maintained by the ATT. It noted that the Indicative Sanction guidelines suggested that removal from the student register was the appropriate sanction for obtaining improper assistance from another person and plagiarism. However, the Tribunal was mindful that the guidelines did not operate as a tariff, and it must decide each case on its merits.
20. The Tribunal had noted that the Defendant was of previous good character and had apologised and acknowledged his failings. He had not sought to persuade the Tribunal that he was not culpable and had made full and frank admissions. However, he had initially forcefully denied the allegations when first contacted. Given the serious nature of the Defendant's actions, which included dishonesty,

the Tribunal concluded that the maximum period of suspension alone would not sufficiently reflect the seriousness with which it viewed his behaviour.

21. The Tribunal noted that it may also consider other sanctions under Regulation 20.6 (f)(xi) in addition to another sanction. Given the serious nature of the offence, a suspension for the maximum period of two years combined with a prohibition from sitting any ATT examination for a period of four years would appropriately reflect the seriousness of the charges brought. The Tribunal considered that the additional period of sanction in not permitting the Defendant to sit examinations would reflect the seriousness with which it viewed the dishonesty in this case and would send a signal to the Defendant, the profession and the public re-affirming the standards expected of a student member of the ATT.

22. In these circumstances, the Tribunal determined that the maximum two-year suspension from the student register, combined with an additional period of sanction of four years in which the Defendant would not be permitted to sit ATT examinations would be sufficient to maintain public trust in the profession and the regulatory process and would have a deterrent effect on other student members. The Tribunal concluded that this would be sufficient to mark the seriousness of the Respondent's behaviour and in all the circumstances of the case, removal would be punitive and disproportionate.

### **Costs**

23. The Tribunal had regard to the Guidance on Awarding Costs. It noted that its power to award costs was set out in Regulation 20.6 (f) in dealing with a Defendant against whom a charge has been proved. The presumption that an unsuccessful defendant should pay costs was based on the principle that the majority of professional members should not subsidise the minority who, through their own failing, have brought upon themselves disciplinary proceedings. The power to award costs was discretionary. The general principle required exceptional circumstances for a Tribunal not to award costs against an unsuccessful defendant.

24. The Tribunal considered the schedule and considered that the costs outlined were proportionately and reasonably incurred.
25. The Tribunal also had regard to the evidence relating to the financial circumstances of the Defendant. It accepted that there were exceptional circumstances in that he would face extreme hardship if a costs order were imposed for 100% of the costs properly incurred.
26. The Tribunal ordered that a part of the attributable costs in the sum of £550 be paid by the Defendant in instalments at a level and frequency to be determined by the TDB.

### **Publication**

27. The Tribunal noted the contents of the Guidance for Disciplinary Panel Members on the publication of disciplinary and appeal findings and Regulation 28.
28. It noted the general principle that any disciplinary finding made against a member would be published and the member named in the publication of the finding. The purpose of publishing such a decision was not to add further punishment for the member. It was to provide reassurance that the public interest was being protected and that where a complaint was made against a member of one of the professional bodies covered by the Taxation Disciplinary Scheme, there were defined, transparent procedures for examining the complaint in a professional manner and for imposing a sanction upon a member against whom a disciplinary charge had been proved.
29. The Tribunal further noted that under Regulation 28.3, it had a discretion to order that the name of the member or the details of orders made against them should not be published. The Tribunal did not find any circumstances, let alone any wholly exceptional circumstances, which would justify an absence of publicity.
30. The Tribunal ordered that, in accordance with Regulations 28.1, this order and these findings should be published as soon as practical referring to the Defendant by name. The finding would remain on the Board's website for a period of 3 years in accordance with the Annex B of the Indicative Sanctions Guidance December 2020.



*Linda Lee*

Linda Lee  
Chair

Dated: June 2021