

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

Reference: TDB/2021/8

**THE TAXATION DISCIPLINARY BOARD**

– and –

**MS. NIKITA CHOUDHURY**

**(Student No.: 262246)**

**&**

**MR. RAKIB MIAH**

**(Student No.: 262259)**

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**DECISION AND REASONS**

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<b>Date of Hearing</b>	13 September 2021
<b>Venue</b>	Virtual using Microsoft Teams
<b>Tribunal Members</b>	
Legally Qualified Chair	Ian Comfort
Professional Member	Ian Luder
Lay Member	Penny Griffith
<b>Tribunal Clerk</b>	Nigel Bremner
<b>Taxation Disciplinary Board</b>	Represented by Graham Gilbert, Counsel.
<b>Ms Choudhury</b>	Not present and not represented
<b>Mr Miah</b>	Not present and not represented

**Preliminary Application**

1. Mr Gilbert, on behalf of the Taxation Disciplinary Board (“TDB”) invited the Tribunal to exercise its discretion under Regulation 16.3 of The Taxation

Disciplinary Scheme Regulations 2014 (as amended November 2016) (“the Regulations”). Regulation 16.3 provides that: *The Disciplinary Tribunal may hear charges against two or more Defendants in the same hearing.*

2. Mr Gilbert submitted that the allegations against Ms Choudhury and Mr Miah are based on the same facts and are intertwined. He submitted that hearing the two matters together will allow the Tribunal to gain a clear picture of the facts of the complaint.
3. The Tribunal considered the application. It took account of the principles derived from the case of *R v Assim [1966] 2 Q.B. 249*, in that where the matters constituting the individual charges are so related in time or by other factors the interests of justice are best served by their being heard together. Having considered the nature of the charges and the underlying facts, the Tribunal exercised its discretion under Regulation 16.3 to hearing the charges against Ms Choudhury and Mr Miah in the same hearing.

## **Charges**

*Ms Choudhury*

### Charge 1

- 1.1. When sitting the ATT Paper 1 - Personal Taxation Examination on 4 November 2020, the Defendant colluded with others, namely Mr Rakib MIAH.
- 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.
- 1.3. If charges 1.1 and 1.2 are proved, the Defendant is in breach of:
  - (a) Rules 2.1 and 2.2.1 in that she acted dishonestly, in breach of the fundamental principle of integrity;
  - (b) Rules 2.1 and 2.6.2 and/or 2.6.3 in that she did an act which discredits the profession, in breach of the fundamental principle of professional behaviour in that she failed to:
    - (i) uphold the professional standards of the ATT as set out in the Laws of the CIOT and ATT; and /or
    - (ii) take due care in her professional conduct and professional dealings; and /or

(iii)performed her professional work improperly or negligently to such an extent as to be likely to bring discredit to herself, to the ATT or to the tax profession; and/or

(iv)conducted herself 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.

*Mr Miah*

Charge 1

- 1.1. When sitting the ATT Paper 1 - Personal Taxation Examination on 4 November 2020, the Defendant colluded with others, namely Ms Nikita CHOUDHURY.
- 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.
- 1.3. If charges 1.1 and 1.2 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;
  - (b) Rules 2.1 and 2.6.2 and/or 2.6.3 in that she 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; 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; 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.

**Service of Notice of the Hearing**

4. The Tribunal was informed at the start of this hearing that neither Ms Choudhury nor Mr Miah were in attendance.

*Ms Choudhury*

5. Mr Gilbert referred the Tribunal to documentation provided. He said that notice of hearing (“the Notice”) had been sent to Ms Choudhury’s registered address on 16 July 2021.
6. Mr Gilbert submitted that the TDB had complied with the requirements of Regulation 14.1 in relation to notice of this hearing.
7. The Tribunal noted that the Notice provided details of the time, date and venue of the hearing and that copies of documents set out in Regulation 14.1 (a) –(e) had been sent to Ms Choudhury.
8. In the light of all of the information available, the Tribunal was satisfied that Ms Choudhury has been served with notice of this hearing in accordance with the requirements of Regulation 14.1.

*Mr Miah*

9. Mr Gilbert referred the Tribunal to documentation provided. He said that the Notice had been sent to Mr Miah’s registered address and signed for on 19 July 2021.
10. Mr Gilbert submitted that the TDB had complied with the requirements of Regulation 14.1 in relation to notice of this hearing.
11. The Tribunal noted that the Notice provided details of the time, date and venue of the hearing and that copies of documents set out in Regulation 14.1 (a) –(e) had been sent to Mr Miah.
12. In the light of all of the information available, the Tribunal was satisfied that Mr Miah has been served with notice of this hearing in accordance with the requirements of Regulation 14.1.

**Proceeding in Absence**

13. The Tribunal next considered whether it should proceed in the absence of Ms Choudhury and Mr Miah. It had regard to Regulations 17.3 and 17.4 and to the principles set out in *GMC v Adeogba [2016] EWCA Civ 162*.

*Ms Choudhury*

14. Ms Choudhury consented on the Response Form to the hearing being held in her absence.

*Mr Miah*

15. Mr Miah did not consent on the Response Form to the hearing taking place in

his absence. However in an email to the TDB dated 28 August 2021, Mr Miah said that he had decided not to attend the hearing and provided written representations for the Tribunal to consider.

## **Background**

16. Ms Choudhury and Mr Miah are student members of the Association of Taxation Technicians (“ATT”). On 4 November 2020 they both sat Paper 1 of the Personal Taxation Examination (“the Exam”).
17. Due to the COVID-19 pandemic, the Exam was undertaken remotely and was sat at a remote location of a student’s choosing. The Exam was subject to particular rules: the November 2020 Exam Regulations (“the Exam Regulations”). These provided the following:
  - (i) 1: *you are not permitted to communicate with, receive assistance from, or copy the answers of any other exam candidate, or any other individual. The answers you submit must be entirely your own work.*
  - (ii) 3: *you cannot share your answers with other exam candidates or other individuals*
  - (iii) 5: *before or during the exam you must not behave in a manner that will distract your fellow candidates, either by sending messages, and any other form of communication or interaction which disrupts other candidates’ exams.*
  - (iv) 9: *the exam is open book, this means you may refer to any books, study manuals, pre-prepared notes, and online resources during the exam.*
18. Regulation 11 of the Exam Regulations notified students that their answers would be submitted to a check for collusion by a software programme. It notified students that, if collusion was detected, then candidates would be disqualified and reported to the TDB. Collusion was defined as *communicating with other candidates sitting the exam or any other individual to collaborate, discuss the exam questions or gain any other advantage during the exam.*
19. When submitting their answers, students were required to provide confirmation that *“the answers I submit to this exam will be all my own work and I have sat the exam in accordance with the instructions given in the November 2020 Online Exam Regulations”*.
20. Ms Choudhury and Mr Miah’s transcripts were checked by Plagscan; software designed to detect plagiarism. This uncovered a high level of similarity between

the two Paper 2 scripts of around 30%, only part of which could be explained by a reliance on manuals.

21. The Chief Examiner subsequently undertook a review of the papers submitted and noted similarities in the wording, layout and errors.
22. Due to these concerns, both candidates were written to by the ATT so that they could provide a response.
23. Ms Choudhury replied by email on 6 January 2021. She stated that she had adopted a practice of revising with friends and the similarities were the result of this group revising together “using Zoom and **creating** answer templates”. She apologised that the situation had occurred and undertook to find a different method of revision in the future.
24. Mr Miah made similar representations to Ms Choudhury, noting that he too would like to apologise and stating he would take a “new approach” to revision in the future.
25. Given the collusion uncovered, both students were disqualified from the exam. They were notified by letter on 26 January 2021. The matter was subsequently referred to the TDB.

### **Admissions and Findings**

26. The Tribunal was provided with a copy of the Response Form submitted by Ms Choudhury dated 25 July 2021. Ms Choudhury admitted charges 1.1, 1.2, 1.3 (a), 1.3 (b)(i), 1.3(b)(ii) and 1.3(b)(iv).
27. In light of the admissions and Ms Choudhury’s response on the Response Form, Mr Gilbert withdrew paragraph 1.3 (b) (iii) from the Charge.
28. The Tribunal was provided with a copy of the Response Form submitted by Mr Miah dated 25 July 2021. Mr Miah admitted all charges.
29. In light of the admissions, the Tribunal found the Charges proved against Ms Choudhury and Mr Miah.

### **Evidence**

30. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
  - (i) ATT Exam Regulations;
  - (ii) Chief Examiner’s report on potential misconduct in the Exam;
  - (iii) Note on potential collusions;
  - (iv) ATT correspondence with parties;

- (v) Plagscan analysis of exam scripts;
- (vi) Ms Choudhury's exam script;
- (vii) Mr Miah's exam script;
- (viii) Email correspondence between parties;
- (ix) Notice of hearing and associated documents;
- (x) Response Forms from Ms Choudhury and Mr Miah.

## **Sanction**

31. Having found the Charges proved by admission in relation to both Ms Choudhury and Mr Miah the Tribunal has to decide in accordance with Regulation 20.6 what action, if any, it should take.
32. In deciding on the appropriate sanction, the Tribunal considered the guidance contained in the Taxation Disciplinary Board's Indicative Sanctions Guidance of December 2020 ("the Guidance") and also noted the sanctions imposed in other similar cases, as recorded in Annex D to the 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'*.
33. 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'*.
34. The Tribunal considered the aggravating and mitigating factors.

### Ms Choudhury

The matter was aggravated by the dishonesty shown whilst sitting an examination, where on this occasion there was an exceptional degree of trust placed on students. However, in mitigation Ms Choudhury made full admissions at an early stage, apologised for her actions and was remorseful for what she had done. She has shown developing insight and reflected on her behaviour. She is at an early stage in her career and has no previous regulatory concerns. The Tribunal concluded that the risk of repetition was low.

### Mr Miah

The matter was aggravated by the dishonesty shown whilst sitting an examination, where on this occasion there was an exceptional degree of trust placed on students. However, in mitigation Mr Miah made full admissions at an early stage, apologised for his actions and was remorseful for what he had done. He has shown developing insight and reflected on his behaviour. He is at an early stage in his career and has no previous regulatory concerns. The Tribunal concluded that the risk of repetition was low.

35. 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.
36. The Tribunal also felt that the charges were so serious that a censure would not be appropriate. This had been an act of dishonesty and a censure would not be sufficient to maintain public confidence.
37. 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.
38. The Tribunal decided that although this was a case of dishonesty the mitigation was such that the matter could be dealt with by recommending a two-year suspension from the student register. This sanction would be sufficient to mark the seriousness of the behaviour, maintain public trust in the profession and the regulatory process and have a deterrent effect on other student members. The Tribunal concluded that in all the circumstances of the case, removal would be punitive and disproportionate.

### **Costs**

39. The Tribunal had regard to the Annex C of the Guidance in relation to awarding costs and 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.

40. The Tribunal considered the schedule and considered that the costs outlined were proportionately and reasonably incurred.
41. The Tribunal had regard to the evidence relating to the financial circumstances of Ms Choudhury and Mr Miah. It noted that Ms Choudhury had provided a P45 dated 28 August 2021, which set out her earnings prior to her recently leaving her employment. Mr Miah had provided documents to show that he was of limited financial means and was currently in receipt of Universal Credit.
42. The Tribunal took account of the different financial means of each party and ordered that the sum of £100 be paid by Mr Miah and £1000 by Ms Choudhury as part of the attributable costs. The costs may be paid in instalments at a level and frequency to be determined by the TDB.

### **Publication**

43. The Tribunal noted the contents of Annex B of the Guidance and Regulation 28.
44. 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.
45. 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 that would justify an absence of publicity.
46. The Tribunal ordered that, in accordance with Regulations 28.1, this order and these findings should be published as soon as practical, following the 21-day

appeal period, and refer to each defendant by name. The finding would remain on the TDB website for a period of 3 years in accordance with Annex B of the Guidance.

**Ian Comfort**  
**Chair, Disciplinary Tribunal**  
**Taxation Disciplinary Board**