

IN THE MATTER OF THE TAXATION DISCIPLINARY BOARD

Reference: TDB/2021/8

THE TAXATION DISCIPLINARY BOARD

– and –

MS. SHALINI RENUMAKULA

(Student No.: 260292)

&

MS. MAGDALENA DURMA

(Student No.: 261371)

DECISION AND REASONS

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

Preliminary Applications

Joinder

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 Renumakula and Ms Durma 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 Renumakula and Ms Durma in the same hearing.

Amendment to the Charges

4. Mr Gilbert applied to amend Charge 1.1 against Ms Renumakula and Ms Durma. He referred the Tribunal to the wording of the Charge set out in the Response Forms sent to Ms Renumakula and Ms Durma. This referred to the “ATT Paper 2 Business Taxation Examination”. He submitted that Ms Renumakula and Ms Durma were fully aware of the examination that they sat and the concerns that were raised about that examination. He submitted that in the circumstances there was no injustice to the parties if the Charge were amended to reflect the correct examination.
5. The Tribunal considered the application and took account of Regulation 17.6. It decided that there would be no injustice in amending Charge 1.1 in relation to Ms Renumakula and Ms Durma. It agreed the application to replace “Advanced Technical Examination – Taxation of Individuals” with “ATT Paper 2 - Business Taxation Examination”

Background

6. Ms Renumakula and Ms Durma are student members of the Association of Taxation Technicians (“ATT”). On 5 November 2020 they both sat Paper 2 of the Business Taxation Examination (“the Exam”).

7. 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.*
8. 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.*
9. 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"*.
10. Ms Renumakula's and Ms Durma'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.
11. The Chief Examiner subsequently undertook a review of the papers submitted and noted similarities in the wording, layout and errors.
12. Due to these concerns, both candidates were written to by the ATT so that they could provide a response.
13. Ms Durma replied by email on 11 January 2021. She stated that all the work was her own and was based on material available to her. She also stated that

she was suffering from various forms of ill-health during the exam period, and English was not her first language. Both factors, she said, were cited as causing a greater reliance than others on the prepared texts.

14. Ms Renumakula replied in similar terms, stating she was “appalled” at the allegation and writing that *“I have created preprepared notes, calculation templates for the exam and annotated the materials with markings. As far as my memory for some of the questions in the exam, I have directly referenced content from the materials I have used to prepare for the same.”*
15. Despite these denials, both were disqualified from both the examinations they had sat by the ATT Examination Committee.

Charges (as amended)

Ms Renumakula

Charge 1

- 1.1. When sitting the ~~Advanced Technical Examination – Taxation of Individuals~~ ATT Paper 2 - Business Taxation Examination on 5 November 2020, the Defendant colluded with others, namely Ms. Magalena DURMA.
- 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.

Ms Durma

Charge 1

- 1.1. When sitting the ~~Advanced Technical Examination – Taxation of Individuals~~ ATT Paper 2 - Business Taxation Examination on 5 November 2020, the Defendant colluded with others, namely Ms. Shalini RENUMAKULA.
- 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.

Charge 2

- 2.1. On receiving correspondence from the TDB on 15 February 2021 and 26 April 2021, the Defendant failed to respond without unreasonable delay.
- 2.2. The Defendant knew or should have known at the time of the examination that such conduct was in breach of ATT's Professional Rules & Practice Guidelines.
- 2.3. If charges 2.1 & 2.2. are proved, the Defendant is in breach of Rule 2.13.2 in that she failed to respond to the TDB without unreasonable delay.

Service of Notice of the Hearing

16. The Tribunal was informed at the start of this hearing that neither Ms

Renumakula nor Ms Durma were in attendance.

Ms Renumakula

17. Mr Gilbert referred the Tribunal to documentation provided. He said that notice of hearing (“the Notice”) had been sent to Ms Renumakula’s registered address on 16 July 2021.
18. Mr Gilbert submitted that the TDB had complied with the requirements of Regulation 14.1 in relation to notice of this hearing.
19. 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 Renumakula.
20. In the light of the information available, the Tribunal was satisfied that Ms Renumakula has been served with notice of this hearing in accordance with the requirements of Regulation 14.1.

Ms Durma

21. Mr Gilbert referred the Tribunal to documentation provided. He said that the Notice had been sent to Ms Durma’s registered address on 16 July 2021.
22. Mr Gilbert submitted that the TDB had complied with the requirements of Regulation 14.1 in relation to notice of this hearing.
23. 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 Durma.
24. In the light of the information available, the Tribunal was satisfied that Ms Durma has been served with notice of this hearing in accordance with the requirements of Regulation 14.1.

Proceeding in Absence

25. The Tribunal next considered whether it should proceed in the absence of Ms Renumakula and Ms Durma. 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 Renumakula

26. Mr Gilbert referred the Tribunal to the email from Ms Renumakula to the TDB dated 28 August 2021, where she says: “*I confirm that I am happy for the hearing to proceed in my absence.*”

27. Mr Gilbert submitted that Ms Renumakula had voluntarily absented herself and that the Tribunal should proceed in her absence.
28. The Tribunal noted that Ms Renumakula had received the notice of this hearing and had confirmed that she is content for the hearing to proceed in her absence.
29. In these circumstances, the Tribunal decided that it is appropriate to proceed in the absence of Ms Renumakula.

Ms Durma

30. Mr Gilbert said that the TDB has made numerous attempts to contact Ms Durma and she had failed to respond. He referred the Tribunal to the last email from the TDB to Ms Durma dated 31 August 2021 where it stated that *“If you fail to respond the Tribunal would be requested to proceed with the hearing in your absence.”*
31. Mr Gilbert submitted that in the absence of any response from Ms Durma, the Tribunal should conclude that she has voluntarily absented herself and proceed in her absence.
32. The Tribunal noted that Ms Durma has been served notice of this hearing and has consistently failed to respond to correspondence from the TDB. She had not sought an adjournment and there was nothing before the Tribunal to suggest that an adjournment would secure her attendance on a future date. The Tribunal noted that there is an obligation on Ms Durma to engage with the TDB as her regulator and a strong public interest in regulatory matters being dealt with expeditiously.
33. In these circumstances, the panel has decided that the public interest outweighs Ms Durma’s interests and that it is appropriate to proceed in her absence.

Admissions

On her response form to the TDB dated 9 August 202, Ms Renumakula both accepts and contests Charges 1.1 and 1.2. She contests Charge 1.3. The Tribunal considered that these responses are equivocal and that all matters should be proved by the TDB. Ms Durma has not responded to the Charges.

Evidence

34. 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 Durma's exam script;
- (vii) Ms Renumakula's exam script;
- (viii) Ms Renumakula's Response Form;
- (ix) Email correspondence between parties;
- (x) Notice of hearing and associated documents.

The Tribunal's Approach

35. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the TDB and it is for the TDB to prove the charges. Ms Durma and Ms Renumakula do not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities -whether it is more likely than not that the events occurred.
36. The Tribunal had regard to *R (Kuzmin) v General Medical Council (GMC) [2019] EWHC 2129 (Admin)*, where it was determined that a tribunal may draw adverse inference when a defendant does not give evidence subject to:
- (i) A prima facie case to answer has been established;
 - (ii) The defendant has been given appropriate notice and warning that, if they do not give evidence, then such an inference may be drawn. The defendant must be given an opportunity to explain why it would not be reasonable for them to give evidence and, if it is found that there is no reasonable explanation, be given an opportunity to give evidence;
 - (iii) There was no reasonable explanation for the defendant not giving evidence; and
 - (iv) There were no other circumstances which would make it unfair to draw an adverse inference.
37. The Tribunal also had regard to the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club) [2017] UKSC 67*, which states: '*When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the*

facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The Tribunal's Analysis of the Evidence and Findings

38. The Tribunal has considered each subparagraph of the Charges separately, has taken into account the submissions of Mr Gilbert and has evaluated the documentary evidence in order to make its findings on the facts.

Charge 1.1 collusion between Ms Durma and Ms Renumakula when sitting the Exam

39. Mr Gilbert referred the Tribunal to the examination scripts for Ms Renumakula and Ms Durma. He highlighted several significant similarities in the scripts in terms of wording, spelling mistakes and format. He also referred the Tribunal to the Chief Examiner's report and in particular to the comments regarding similarities in the scripts.
40. Mr Gilbert further referred the Tribunal to Ms Renumakula's Response Form where she says:
- "I have performed lots of combined studies with Ms Magdalena Durma and as it's an open book examination I have created pre-prepared notes, calculation templates for the exam and annotated materials with markings. ... I was not completely aware of the exam rules and in midst of preparing for this exam during middle of pandemic and due to lack of proper interactions with people who planned to attend this exam. I have overlooked some of the rules and regulations of the exam. "*
41. Mr Gilbert submitted that from the evidence, and from the inferences that the Tribunal could draw from Ms Durma's silence, Ms Renumakula and Ms Durma had colluded when sitting the examination.
42. Having considered the evidence, the Tribunal concluded that it was more likely than not that Ms Renumakula and Ms Durma had colluded with each other when sitting the examination and found this charge proved.

Charge 1.2 knowing at the time of the examination that such conduct was in breach of ATT's Code of Conduct for examinations.

43. Mr Gilbert referred the Tribunal to the declarations signed by Ms Renumakula and Ms Durma when submitting their exam answers. He submitted that by signing the declaration the Tribunal could infer that Ms Renumakula and Ms Durma were aware of ATT's Code of Conduct for examinations.
44. Having considered the evidence the Tribunal concluded that Ms Renumakula and Ms Durma would be fully aware that collusion when sitting an examination was unacceptable and would be a breach of the ATT's Code of Conduct. The Tribunal found this charge proved.

Charge 1.3

45. Mr Gilbert submitted that collusion during an examination was dishonest by the standards of ordinary, decent people and, even though this was an open book examination, Ms Renumakula and Ms Durma would know that it was dishonest.
46. The Tribunal noted that in her Response Form Ms Renumakula contests that she was dishonest. She states:
"To be very honest, I did not mean to be dishonest or breach the professional behaviour... I can only at this moment sincerely apologise for the unknowing mistake from my end and for not understanding the rules correctly... I never was and would never be dishonest."
47. Having found Charges 1.1 and 1.2 proved, the Tribunal concluded that the actions of Ms Renumakula and Ms Durma were in breach of Rules 2.1 and 2.2.1, 2.6.2 and 2.6.3 and found Charges 1.3 (a) and 1.3 (b) proved.

Charge 2.1 (Ms Durma only)

48. Mr Gilbert submitted that Ms Durma had failed to respond to numerous communications from the TDB seeking her comments on the process. These emails were sent to 'magdalena.durma@googlemail.com', the same address from which she had responded to the ATT in January. Requests for her views were sent on:
 - (i) 15 February 2021 (2),
 - (ii) 16 February 2021, and
 - (iii) 26 April 2021.
49. In the last email, Ms Durma was warned that a failure to respond may put her in breach of rule 2.13.2. She still failed to respond.

50. The Tribunal noted that Ms Durma has not responded to the TDB's requests sent to her on 15 February 2021 and 26 April 2021. It found this charge proved.

Charge 2.2 (Ms Durma only)

51. Mr Gilbert submitted that Ms Durma would be aware of the ATT's Professional Rules & Practice Guidelines and the requirement to respond to the TDB without unreasonable delay. He said that the Tribunal could draw an inference from her silence on this matter.
52. The Tribunal considered paragraph 2.13 of the ATT's Professional Rules & Practice Guidelines (effective from November 2018 as amended January 2021). It concluded that Ms Durma should have known that she had an obligation to respond to the TDB without unreasonable delay. It found this charge proved.

Charge 2.3 (Ms Durma only)

53. Having found charges 2.1 & 2.2. proved, the Tribunal concluded that Ms Durma is in breach of Rule 2.13.2 in that she has failed to respond to the TDB without unreasonable delay. It found this charge proved.

Sanction

54. Having found the Charges proved in relation to both Ms Durma and Ms Renumakula the Tribunal has to decide in accordance with Regulation 20.6 what action, if any, it should take.
55. 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 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'*.
56. 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'.

57. The Tribunal considered the aggravating and mitigating factors.

Ms Renumakula

58. 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. Ms Renumakula has not made full admissions to the Charges and has been equivocal in her responses. She has demonstrated limited insight. In mitigation, Ms Renumakula has no previous regulatory concerns.

59. Ms Durma

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. Ms Durma has not responded to the Charges and has failed to respond to the TDB. In mitigation, Ms Durma has no previous regulatory concerns.

60. 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.
61. 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.
62. 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 Guidance suggested that removal from the student register was the appropriate sanction for obtaining improper assistance from another person and plagiarism.
63. The Tribunal decided that this was a case of dishonesty where there was no reason to depart from the Guidance. It concluded that in order to uphold standards, maintain confidence in the profession, and have a deterrent effect on other student members, the appropriate and proportionate sanction in this matter was to recommend that Ms Renumakula and Ms Durma be removed the

student register maintained by the ATT.

Costs

64. The Tribunal had regard to the Annex C of the Guidance in relation to 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.
65. The Tribunal considered the schedule and considered that the costs outlined were proportionately and reasonably incurred.
66. The Tribunal had regard to the evidence relating to the financial circumstances of Ms Durma and Ms Renumakula. It noted that Ms Durma had not provided any information. Ms Renumakula provided details of her financial means including a payslip and evidence of her outgoings.
67. The Tribunal took account of the financial means of each party and ordered that a part of the attributable costs in the sum of £1000 be paid by Ms Renumakula and £1361.60 by Ms Durma. The costs may be paid in instalments at a level and frequency to be determined by the TDB.

Publication

68. The Tribunal noted the contents of Annex B of the Guidance in relation to the publication of disciplinary and appeal findings and Regulation 28.
69. 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.
70. 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.

71. The Tribunal ordered that, in accordance with Regulations 28.1, this order and these findings should be published as soon as practical after the 21-day appeal period, referring to each defendant by name.

Ian Comfort
Chair, Disciplinary Tribunal
Taxation Disciplinary Board