IN THE APPEAL TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD

TDB/2021/3
TDB/2021/4

TAXATION DISCIPLINARY BOARD

Appellant

v.

Mr IMRAN ASHRAF
(Student no: 205900)
&
Mr HAFIZ MUHAMMAD TAYYAB
(Student no: 213669)

Respondents

DECISION
20th JANUARY 2022

INTRODUCTION:

1. The Appeal Tribunal ('the Tribunal') sat on 20 January 2022 to hear an appeal brought by the Taxation Disciplinary Board ('Appellant') against a finding made by the Disciplinary Tribunal on 14 September 2021. At that hearing the Disciplinary Tribunal found that the charges against Mr Imran Ashraf and Mr Hafiz Muhammad Tayyab ('the Respondents') were not proved.

2. The hearing was conducted remotely by video conferencing. The Tribunal was chaired by Mr Andrew Granville Stafford (legally qualified chair) sitting with Mr Michael Kaltz CTA, BSc, FCA, LLM (CIOT member) and Mrs Lorna Jacobs (lay member). The Appellant was represented by Mr Graham Gilbert of Counsel. The Respondents were represented by Mr Michael Holland of Counsel. The Clerk to the Tribunal was Mr Nigel Bremner.

3. The Tribunal was provided with and read the appeal bundle (332 pages) which included the documents that were before the Disciplinary Tribunal, a transcript of the oral evidence given at the Disciplinary Tribunal hearing and a written application to adduce new evidence made on behalf of the Appellant.

4. The following abbreviations are used in this determination.

> The CIOT means the Chartered Institute of Taxation;
>
> Disciplinary Regulations means the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016);
>
> PRPG means the CIOT & ATT Professional Rules and Practice Guidelines 2018.

PRELIMINARY MATTERS:

5. Mr Gilbert on behalf of the Appellant made an application under regulation 22 of the Disciplinary Regulations for permission to rely on new evidence. The evidence was a statement of Mr Daniel Lyons, Chair of the Examination Committee of the CIOT, dated 6 December 2021.

6. Regulation 22 gives the Tribunal a discretion to allow a party to the appeal to rely on new evidence which was not before the Disciplinary Tribunal. Any such application should be made not less than 14 days before the appeal hearing. Mr Gilbert accepted that the application had been made late, but urged the Tribunal to exercise its power under regulation 33.1 to dispense with this time limit on the grounds there were 'exceptional circumstances'. He submitted that to allow this statement in would not cause any prejudice to the Respondents as it merely reiterated and condensed the evidence that was before the Disciplinary Tribunal and does not contain any truly new material.

7. Mr Holland on behalf of the Respondents opposed the application. He said that once a tribunal had made its decision, that should be the end of the matter. The reality was that the information contained in Mr Lyons' statement was known to the Appellant prior to the hearing before the Disciplinary Tribunal. It therefore could have been put before the

Disciplinary Tribunal. An appeal is not an opportunity, he submitted, to re-run your case.

8. In deciding whether to exercise its discretion under regulation 22 and allow this application, the Tribunal was guided by the well-known test set out by the Court of Appeal in *Ladd v Marshall* [1954] 1 WLR 1489. This governs the admissibility of new evidence in civil appeals. First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial. Second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive. Thirdly, the evidence must be apparently credible.

9. The Tribunal was satisfied that Mr Lyons' statement and exhibits, which run to over 70 pages, contains new evidence which was not before the Disciplinary Tribunal. In being fair to both parties, it considered whether this evidence satisfied the first part of the *Ladd v Marshall* test. In the Tribunal's view, it did not. This evidence could have been produced to the Disciplinary Tribunal. It would be unfair to consider new material which could have been put before the Disciplinary Tribunal but was not.

10. The Tribunal therefore refused the application.

CHARGES:

Mr Tayyab

Charge 1

1.1. When sitting the Advanced Technical Examination – Taxation of Individuals examination on 12 November 2020, the Defendant colluded with others, namely Mr Imran ASHRAF.

1.2. The Defendant knew or should have known at the time of the examination that such conduct was in breach of the CIOT'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 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 CIOT 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 CIOT or to the tax profession; and/or

(iv) conducted himself in an unbefitting or unlawful manner, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT.

Mr Ashraf

Charge 1

1.1. When sitting the Advanced Technical Examination – Taxation of Individuals examination on 12 November 2020, the Defendant colluded with others, namely Mr Hafiz Muhammad TAYYAB.

1.2. The Defendant knew or should have known at the time of the examination that such conduct was in breach of CIOT'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 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 CIOT 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 CIOT or to the tax profession; and/or

(iv) conducted himself in an unbefitting or unlawful manner, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT.

BACKGROUND:

11. Mr Tayyab and Mr Ashraf are student members of the CIOT. On 12 November 2020 they both sat the Advanced Technical: Taxation of Individuals examination paper.

12. Due to the Covid-19 pandemic, the exam was sat remotely at a location of a student's choosing and with no invigilation. The exam was subject to the November 2020 Exam Regulations, which include the following.

> Regulation 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.
>
> Regulation 3: you cannot share your answers with other exam candidates or other individuals
>
> Regulation 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.
>
> Regulation 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.

13. Regulation 11 of the Exam Regulations notified students that their answers would be submitted to a check for collusion by a software programme. It also notified students

that, if collusion was detected, they 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.

14. The exam software does not allow text to be cut and pasted onto the answer screen. If candidates were to share answers, for example by email or text message, each would have to physically type the answer onto their screen.

15. When submitting their answers, students were required to provide the following confirmation:

> '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.'

16. It was not in dispute that the Respondents both provided this confirmation.

17. The Respondents' scripts were checked by Plagscan; software designed to detect plagiarism. This uncovered a significant level of similarity between the two of them.

18. The Chief Examiner subsequently undertook a review and prepared a report, noting a high level of similarities in the wording, layout and errors in the two papers. The Chief Examiner concluded that:

> '. . . whilst there are elements which differ which suggest some individual input . . . the scale of similarities is such that it is inconceivable that it could be purely by chance.'

19. Both were written to by the CIOT on 8 January 2021 and asked to explain why there was a high level of similarity between their answers and that of another candidate. Both denied that their answers had been the product of collusion.

20. Mr Ashraf said in his reply on 15 January 2021:

> 'I am surprised to know that my answers have a similarity with another candidate's answer. . .

I can confirm my answers wholly represent my own work for this exam. . .'

21. Mr Tayyab responded by email on 11 January 2021:

> 'I have read and understood well the guidelines from CIOT and reminders to follow the guidelines issued by the institution. I also understood that I had to sit alone in a room to submit my paper without any external help.
>
> At the time of my exam, I was sitting alone in the room and no one was available there to help me with my exam. . .
>
> I had meticulously prepared all my notes and course materials for the day on all the possible topics. When I sat the paper, after reading the question paper I made the notes to the relevant questions from the question bank and the notes from my Tolly [sic] tutors.
>
> I completely understand the guidelines and rules set out by the CIOT and the consequences of not following them, that is why I made sure that I do not commit any action that breaks the rules set by the institution.
>
> I went through every part of the syllabus and highlighted everything that I needed to take help on the day.'

22. Both Respondents were informed by letter dated 25 February 2021 that the matter was proceeding as a formal complaint and were provided with evidence in support of the complaint.

23. In response Mr Ashraf wrote to the TDB on 12 March 2021, in which he reiterated that he had not colluded with another candidate. He said:

> 'I also find it odd that you would suspect that two candidates would sit together and answer the same questions and yet make the answers so similar. In the Chief Examiners opinion that these similarities are too much for it to be a coincidence. In my opinion these similarities make it even more obvious that these have to be a coincidence because if I was colluding with another candidate then I would have been most careless if I was going to have such similarities to another candidate. It is obvious to my logic that if candidates do collude then they would

> certainly take extra caution to make their answers even more different, I find this suspicion/accusation of colluding a double insult; 1st that I need to collude with another candidate and 2nd that I would be so foolish as to make it that obvious and provide answers with such similarities as the candidate that I supposedly colluded with.'

24. Mr Tayyab responded by email on 11 March 2021, also reiterating that he had not colluded. He said 'Any collusion happened in absolutely coincidental rather intentional [sic]'. He said he had taken the whole month off to prepare for the exam and he had gone through each and every chapter of the syllabus. He said that colleagues had witnessed his hard work. He added that, as he had been disqualified from the Exam, he had booked to take it again.

25. In his response form, dated 2 August 2021, Mr Ashraf denied all the charges. He submitted a statement in response to the allegation. He said that he took the exam at his office in Wandsworth, London, where he has a private space. He provided pictures showing a glass portioned office space in the corner of a larger open plan office. He said that, as this was an open book exam, he had his notes in front of him. It was not possible, he said, for anyone to access his workspace without his permission.

26. Mr Tayyab also denied the charges in his response form. Mr Tayyab made a witness statement dated 13 August 2021. He said that the online system for exams looked daunting to him because of his slow typing speed and lack of online exam experience. However, his preparation for the Exam was very good. He had taken the whole of the month of October off work.

27. Mr Tayyab said that as he was living in a shared house, he did not have a proper place to take the exams. Mr Ashraf offered him a room at his office premises for the days of this exam and another one. He said:

> 'I gladly accepted this offer because it met all the requirements for the CIOT online exams. He had three rooms in his office. He sat in his usual office room and I occupied in [sic] room at the other end of his premises. There is no way we could communicate or see each other.'

28. He denied any collusion. He said:

‘In hindsight, the only reason is coincidental similarities. This might be because both Imran Ashraf and I were taking the same exam and followed the same preparation methods. We regularly share preparation notes and discussed topics at lengths. . .

I prepared notes on all the relevant topics and highlighted in color [sic] the parts to be used in answers in case questions were asked on those topics. I shared these notes with Mr Ashraf and also read his notes. In our discussions we debated the formats best to be used to answer question [sic] in the exams. This might have caused similarity in the responses we gave to the exam questions . . .’

DECISION OF THE DISCIPLINARY TRIBUNAL:

29. The Disciplinary Tribunal heard oral evidence from both Respondents. It was provided with a bundle of documents which included:

The Exam Regulations;

Chief Examiner’s report on potential misconduct in the Exam;

Note on potential collusions;

CIOT correspondence with parties;

Plagscan analysis of exam scripts;

Mr Tayyab’s exam script;

Mr Ashraf’s exam script;

Email correspondence between parties;

Notice of hearing and associated documents;

Response Forms from Mr Tayyab and Mr Ashraf.

30. At paragraphs 14 to 17 the Disciplinary Tribunal set out its approach in respect of the burden and standard of proof, assessing credibility of a witness, the relevance of the Respondents’ good character and the test for dishonesty. The Disciplinary Tribunal referred to *Khan v General Medical Council* [2021] EWHC 374 (Admin) and *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67. No issue is

taken on this appeal in respect of the way the Disciplinary Tribunal directed itself as to the law.

31. The Disciplinary Tribunal found the charges against both Respondents not proved. It set out its reasons under the heading 'The Tribunal's Analysis of the Evidence and Findings'. It said as follows.

> '18. The Tribunal has considered each subparagraph of the Charges separately, has taken into account the submissions of Mr Gilbert and Mr Holland, the oral evidence of Mr Tayyab and Mr Ashraf and has evaluated the documentary evidence in order to make its findings on the facts.
>
> *Charge 1.1 collusion between Mr Tayyab and Mr Ashraf when sitting the Exam*
>
> 19. Mr Gilbert referred the Tribunal to the report of the Chief Examiner and to a number of similarities between the scripts submitted by Mr Tayyab and Mr Ashraf. He submitted that the similarities were such that they could only be the result of collusion when sitting the exam.
>
> 20. Mr Holland submitted that Mr Tayyab and Mr Ashraf were of good character and this should be taken into account when assessing their credibility. Both have accepted in their evidence that they worked together to prepare notes for the exam. Each had their own photocopy of these notes which they used when answering questions. Both deny any collusion when sitting the exam and explain that they did not sit together. Mr Holland submitted that any similarities were as a result of Mr Tayyab and Mr Ashraf: working together prior to the exam; reviewing past papers and questions; preparing and sharing notes on responses to possible questions; and using these notes, as permitted by the Exam Regulations, when sitting the exam.
>
> 21. Mr Gilbert accepted at the outset that the TDB cannot show how the collusion was achieved; it can only draw inferences from the high level of similarity of the answers provided. To prove its case it has to show that it is more likely than not that collusion took place when sitting the exam rather than prior to the exam when the students worked together to prepare notes.

22. Having considered the evidence the Tribunal concluded that the TDB had not met the burden of proof and as such the Charge is not proved.

Charges 1.2 and 1.3

23. Having found Charge 1.1 not proved against Mr Tayyab and Mr Ashraf the Tribunal found that Charges 1.2 and 1.3 were also not proved as they relate to the alleged conduct set out in Charge 1.1.'

GROUNDS OF APPEAL:

32. By his decision dated 1 November 2021, the Disciplinary Assessor gave permission to appeal on two grounds:

> That there was a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal (regulation 21.4(a) of the Disciplinary Regulations);
>
> That the finding of the Disciplinary Tribunal was wrong (regulation 21.4(b)(ii) of the Disciplinary Regulations).

SUBMISSIONS:

33. Mr Gilbert submitted that the appeal should be allowed on both grounds. He said the Disciplinary Tribunal should have adjourned the hearing, either for a short while or for a couple of days, when Mr Ashraf gave evidence to the effect that he had co-operated in preparing notes with Mr Tayyab that both had then used in the exam. The failure to do so was, he submitted, a serious procedural irregularity.

34. In respect of the second ground of appeal, Mr Gilbert submitted that there was clear evidence before the Disciplinary Tribunal that the Respondents had colluded. Therefore the decision of the Disciplinary Tribunal, in finding that collusion had not been proved, was plainly wrong. He highlighted parts of the answers which he said clearly demonstrated collusion.

35. Mr Holland said that the prosecution had proceeded on the basis that, simply because the Plagscan software highlighted similarities, it was assumed automatically that the Respondents must have cheated. In respect of the first ground of appeal, he refuted any

suggestion that the Respondent's had run an 'ambush' defence. The Appellant, he said, knew prior to the hearing that it was going to be contended that they had combined their revision notes. Further, the Appellant had not made any application for an adjournment.

36. In respect of the second ground of appeal he said that there were a number of facts which could not reasonably be disputed. Both Respondents had successfully passed exams previously, they had maintained their denials and had given consistent accounts bearing in mind, in particular, that in the initial stages of the investigation they did not know who it was alleged they had colluded with.

37. Mr Holland pointed out that it was not possible to copy and paste an answer. They had given evidence that they answered the questions in a different order to each other and, because it was a time pressured exam, they had had no realistic opportunity to collude with each other.

38. Mr Holland further submitted that there had been a lack of rigour in the Appellant's approach to the investigation of this case. No comparative analysis had been done between the Respondents' answers and those of other candidates. Further, the Appellant had relied on the fact that both Respondents had written 'the percentage equal to the percentage' in answer to question 5 as being odd phraseology. However, the Respondents had produced at trial an extract from Tolley where the phrase 'percentage is equal to the percentage' is used.

39. The Disciplinary Tribunal, he said, had to make a difficult decision. It had properly directed itself as to the law. The burden of proof was on the Appellant. The Disciplinary Tribunal had concluded that the burden of proof was not met and that, in his submission, was not an unreasonable or irrational conclusion.

DECISION:

Approach

40. The burden of establishing the appeal is on the Appellant. The Tribunal considered the two grounds of appeal separately.

41. For a procedural irregularity to provide a sufficient basis for an appeal the irregularity must have been a serious one and it must have rendered the decision unjust (*Hussain v. General Pharmaceutical Council* [2018] EWCA Civ 22).

42. For an appeal tribunal to find a decision was 'wrong', it must be satisfied that it is plainly wrong (*Gupta v. General Medical Council* [2002] 1 WLR 1691). It is not sufficient for the appeal tribunal to conclude it was probably wrong, or that it would itself have come to a different decision. As the Court of Appeal said in *Prescott v Potamianos* [2019] EWCA Civ 932:

> '… on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge's treatment of the question to be decided, 'such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.'

43. Where the appeal is on the ground that a finding of fact was wrong, the courts have given the guidance as to how the appellate body should approach its task. The following principles are taken from *Gupta* (see above), *Southall v GMC* [201] EWCA Civ 407 and *Bhatt v GMC* [2011] EWHC.

> (a) The appellate tribunal should be slow to interfere with the decisions on matters of fact taken by the first instance body.
>
> (b) The trial tribunal enjoys an advantage which an appeal tribunal does not have, namely the benefit of seeing the witnesses give evidence. Although the appeal tribunal may have a transcript of the evidence, a tribunal is in a better position to judge the credibility and reliability of the evidence given by the witnesses if it has seen them.
>
> (c) Findings of fact founded upon an assessment of the credibility of witnesses are close to being unassailable, and must be shown with reasonable certainty to be wrong if they are to be departed from.

(d) The appellate tribunal, either because the reasons given by the trial tribunal are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that it has not taken proper advantage of having seen and heard the witnesses. Then the matter will become at large for the appellate tribunal.

(e) Where a question of fact has been tried by the first instance tribunal, and there is no suggestion that it has misdirected itself, an appellate tribunal which is disposed to come to a different conclusion having only seen the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial tribunal by reason of it having seen and heard the witnesses could not be sufficient to explain or justify its conclusion.

(f) The appellate tribunal should only reverse a finding on the facts if it can be shown that the findings were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread.

Decision on first ground

44. The procedural irregularity relied on by Mr Gilbert was that the Disciplinary Tribunal should have adjourned for a period so that the issue being raised by Mr Ashraf in his evidence, namely that jointly prepared notes with Mr Tayyab, could be addressed.

45. Whilst it is correct that Mr Ashraf did not mention anything in his Personal Statement about this, Mr Tayyab did. In his statement dated 13 August 2021 he said that he and Mr Ashraf shared their notes. Therefore, the Appellant was on notice that this issue was going to be raised. Further, and more importantly, the Appellant did not claim to be taken by surprise at the hearing or apply for an adjournment.

46. The Appellant failed to show there was a serious procedural irregularity in the proceedings before the Disciplinary Tribunal which rendered those proceedings unjust. The first ground of appeal fails.

Decision on second ground

47. The Tribunal considered the evidence that was before the Disciplinary Tribunal, and in particular the exam scripts. The following table contains excerpts from the answers

given by the Respondents. Mr Tayyab's script is on the left and Mr Ashraf's on the right.

Question 1 Mike is resident but not domiciled in the uk Mike is resident since 2017/18 Where a uk resident but non domiciled individual is taxed on the arising basis then he can claim the capital losses on foreign assets. once the remittance basis is claimed then the loss will not be allowed unless an election is made Once an election under S16ZA made then that states statutory ordering rules for the offset of capital losses. Losses must be set against foreign gains including unremitted gains before uk gains. unremitted foreign gains will therefore need to be disclosed once a s 16zA election has been made Shares in Red Ltd Proceeds 300000 Cost (5000) Gains 29500 The gain will be taxable in the uk because you will be resident in the uk and have the source of income is also UK	Question 1 Mike is resident but not domiciled in the UK Mike is resident since 2017/18 Where a UK residentand non domiciled individual is taxed on the arising basis then he can claim the capital losses on foreign assets. Once the remitance bsis is claimed then the loss will not be allowed unless an election is made. Once an election have made under S16ZA then that states statutory ordering rules for the offset of capital losses. Losses must be setoff against foreign gains including unremitted gains before UK gains. Unremitted foreign gains will therefore need to be disclosed once a S16ZA election has been made. Shares in Red Ltd Proceeds 300000 Cost (5000) Gains 29500 The gain will be taxable in the UK because you will be resident in the UK and have UK source of income.
Question 1 This gain will not be taxable till you get this remitted to uk and there will be no any remittance charges also As Anna is not resident in UK and will not be liable to tax in the uk on non uk income on normal basis But from 6 April 2019 disposals by non uk residents in shares in property rich company (at leats 75% of gross assets made up of interest in	Question 1 Gain would not be taxable and there is no remitance charge applicable unless you get remitted this gain into the UK. Incase of Anna she is not UK resident and she will not be liablie to tax in the UK on non UK income on normal basis From 6 April 2019 any disposal by non UK resident in shares in Property Rich company (At least 75% of gross assets made up of interest in

uk land) are subject to uk CGT, where an individual owns at least 25% of the company at any point 2 years prior to such a disposal. As you hold 30% and the company holds more than 75% of gross assets in uk land so you are caugh under new regulations. you have three ways to calculate the gaibs which are	Ukland) are subject to UK CGT. Where an individual owns at least 25% of the company at any point in 2 years prior to such a disposal. You hold 30% and the company holds more than 75% of gross assets in UK land so you will fall under new UK regulations. You have three ways to calculate the gains as under:
Question 2 If a uk Investor disposes off his units in the offshore non-reporting fund any profit on the sale is chargeed to income tax as miscellaneous income	Question 2 if a uk investor dispose off his units in the offshore non reporting fund any profit on the sale is charged to income tax as miscellaneos income
Question 2 Termination Payment As you worked only for a few months before you were made redundant so looking at your terms you are not supposed to take any paytments and not expect either, that can be contributed as ex-gratia payment But as they have not served you the notice and this can be considered as income in lieu of notice But i assume that you will get this as a loss of office as there is no guideline available from history This income up to 30000 will not be taxable and will not be Nicable also	Question 2 Termination Payment As working only less than a year and made redundant so looking at your contract you are not suppose to take any payments and not expect either that can be contributed asex-gratia payment, But as they have not served you the notice and this can be considered as income in liue of notice we can assume that you will not get this as a loss of office as there is no guideline available from history this income up to £30000 will not taxable and no NI will be calculate.
Question 3 As they are separated in 2017 so after seperation they will be considered as connected parties so the market value will be taken for the transfer As they lived all the time there and Alex is still living so PPR will be avialble to cancel the gain.	Question 3 They are separated in 2017 and after separation they will be considered as connected parties and Market value will be taken for the transfer They lived all the time there and Alex is still living so PPR will be available to cancel the gain.

Question 3 Roll over relief will be allowable as you have invested in the qualifying business within three years of the dispopsal of the assets uded in the business	Question 3 Rollover relief will be allowable as invested in the qualifying business with in three years of the disposal used in the business
Question 4 Dear Ms B Anderson, Further to your letter dated 5 Nov 2020 I would like to congratulate you on your new job and I have drafted the points and tax implication in relation to you benefits received. Having received a salary of £140000 you will be classified as a higher rate tax payer and also you will not be getting any personal allowance Option 1 (see Appendix) If you select a car allowance then this will be treated as your extra salary means that you will be paying income tax along with NIC and that will be deducted at source through PAYE Your Employer will also pay class 1 seconadary NIC at 13.8% under Option 2 under Option two (see Appendix) you will income tax on the benefit i.e 3072 but will not pay any NIC. Employer will pay 13.8% Option3 If you lease your self you will not be able to claim any expenses for the monthly payments but will bve able to claim mileage expenses. Also on the amount that you will pay under lease could have been taxed already as a salary and you have paid income tax and NIC As per my calculations below i would recommend you to take the option 2 as this results in the least amount of tax and NIC Also regarding your fuel card you will be getting a taxable benefit of 7712 that you will	Question 4 Dear Ms B Anderson, In regard to your letter dated 5th November 2020 I would like to say congratulation to you on your new job and i have set out the points below and tax implication in regards your benefits received. Received a salary of 140000 you will be classified as ahigher rate tax payer and you will not be getting personal allowance which is curreently 12500. Option 1 For car allowance this will be treated as benefit and will add in your salary and you will pay income tax along with NIC and that will be deducted at source through payroll. Your employer will pay class 1 secondary NIC at 13.8% under option 1 Option 2 you will income tax on the benefit i.e 3072 but will not pay any nic. employer will pay 13.8% Option3 if you will lease yourself you will not be able to claim any expenses for the monthly payments but will be able to claim milage allowance as per calculation below i would recommend you to take a option 2 as this is most tax beneficial for you Your Fuel card you will be getting from your employer treat as taxable benefit of 7712 and

pay tax at 40%. you will not be deducted for any business miles driven. But you will be given the deduction from HMRC at their approved miles rate on the first 10,000 you will get a 45p so in your case you will get 6000*45p = 2700 as deduction Gym membership will also be your taxable benefit of 750 as this is not wholly, exclusively and necessarily for the employment duties. you will pay benefit in Kind tax at the marginal rate and will not pay any NIC Regarding your courses any fees that you have already paid will not be deductible as an expense. Also any support that you will get from your employer will be taxable benefit as this is not to keep up or maintain the same level of your expertise. because you will be learning something to get benefit in future not day to day normal activities. I believe the information and explanation provided above will be helpful for you to consider the options and tax impolications Should you require any further information please do not hesitate Yours sincerely	you will pay tax at 40%. you will not be deducted for any business miles driven. But you will be given the the deduction from HMRC at their approved miles 6000*45p = 2700 as deduction from your earnings. Gym membership will treat as your taxable benefit of 750 as this is not wholly and exclusively and neccesserly for the employment purpose. you will pay benefit in kind tax at marginal rate and will not pay any NIC Regarding your course fee that you have already paid will not be deductible as an expense. Any support that you will get from your employer will be taxable benefit as this is not to keep up or maintain the same level of your expertise. Because you will be learning something to get benefit in future or enhancing you expertise not day to day activities. Call Allowance i believe the information and explanation provided above will be helpful for you to consider the options and tax implications. If you require any further information please do not hesitate to contact. Yours sincerely
<u>Question 5</u> Where shares are awarded to an employee but are subject to forfeiture at less than market value then we need to see if the restriction is lifted within 5 years or after 5 years in this case as the restriction will be lifted within 5 years so there will be no tax on the the shares at the time of the issue but there will be further charge when the restriction will be lifted As the shares are not readily convertable assets so there will be no	<u>Question 5</u> Where shares are awarded to an employee and are subject to forfeiture at less than market value then need to check if the restriction is lifted within five years or after five years In this case As the restriction will be lifted within 5 years so there will be no tax on the shares at the time of the issue but there will be further charge when the restriction will be lifted And the shares are not readily convertible there will be no national insurance implications.

national insurance implications	
There is no IT on the share issue	There is no income tax charge at the time of share issue.
Further charge will be as foillows when the restriction is lifted	Further charge will be as followes when the restriction id lifted:
Charge will be the percentage equal to the percentage of the initial unrestricted market value of the shares that escaped tax when the shares were origionally acquired	Charge will be the percentage equal to the percentage of the initial unrestricted market value of the shares that escaped tax when the shares were originally acquired
In this case the percentage will be 100% s none of the tax was paid origionally	The percentage will be 100% as none of the tax was paid originally.
100%*7*1000=7000	100%*7*1000=7000
So 7000 will be taxable in the year the restriction is lifted	£7000 will be taxable in the year the restriction will be lifted.
you can make the election under S425(3) to tax at the restricted value at the time of the issue	Client can make the election under s425(3) to the tax at the restricted value at the time of the issue.
4*1000=4000	4*1000=4000
after lifting the restriction tax will be	after lifting the restriction tax will be
(Unrestricted Value -Restricted Value)/Unrestricted Value	Unrestricted value -restricted value
5-4/5*100%=20%	5-4/5*100%=20%
20%*7*1000=1400	20%*7*1000=1400
Total Taxble income will be when the election is made	Taxable income will be when the election is made
=1400+4000=5400	1400+4000=5400
the above results better than paying tax on 7000	above results are better than paying tax on £7000
Alternatively you can elect under s431 to tax the whole income at the time of issue	alternatively you can elect under s431 to tax the whole income at the time of issue of shares
=1000*5=5000	1000*5=5000
that gives the minimum taxable income	this will give the minimum taxable income

but we are not sure that how the market will operate but as per information seems lioke the value of the shares will fall. As per the information i would advise to make an election under S431 and pay tax at the time of the issue as that results in the least amount of taxable income. Finally when you sell the asset you will not be having the big loss assuming the values of the shares go down	But according to the information not sure that how the market value will operate as per information seems like the value of the shares will fall According to information I would advise to make an election under 431 and pay tax at the time of the issue as a reults is the least amount of taxable income. Finally when client sell asset will not be having the big loss assuming the values of the shares go down.

48. Paragraph after paragraph in Mr Tayyab's answers are the same as or highly similar to Mr Ashraf's answers. The order of the paragraphs is the same or virtually so. There are very few examples of a paragraph in one Respondent's answers which is not replicated in the other's, and in the same place within the answer.

49. The order of the words within paragraphs is either identical or very similar in the vast majority of paragraphs in the answers. In particular there are a number of striking similarities in the way sentences have been constructed which, given that they address the bespoke issues in the question, are not explicable on the basis of shared revision notes. They could not be the product of independent thought even if the two candidates were using the same revision materials. The following examples are, in the Tribunal's view, particularly striking.

50. In question 5, Mr Tayyab wrote:

> '. . . not sure that how the market will operate but as per information seems lioke the value of the shares will fall'

and Mr Ashraf wrote the same, except that he spelt the word 'like' correctly and he wrote 'market value' rather than just 'market'. In particular, the construction of the phrases 'not sure that how' and 'but as per information seems like' are idiosyncratic. The same is true of the phrase, 'I would advise to make an election', which appears in the next sentence in both Respondents' scripts. Both have clearly omitted a word after 'advise'.

51. There are further examples of unusual use of language in sentences or phrases which are clearly tailored to the question being asked rather than anything that could be found in a textbook or revision note. In the same question, both wrote 'there will be further charge when the restriction will be lifted'. Had either of them written 'there will be a further charge' or 'there will be further charges' and 'when the restriction is lifted' it might be more readily explainable on the basis of coincidence, but the fact that both have chosen unusual grammar is not.

52. In question 3 both wrote 'They are separated in 2017'. Again, that is an unusual use of grammar, and given that it relates to the particular facts of this question, not explicable on the basis it was contained in their revision notes. Just after that both wrote 'They lived all the time there and Alex is still living so PPR will be available to cancel the gain', save that Mr Tayyab misspelt the word 'available'. The start of that sentence is unusual but what is most striking is that both clearly intended to make the point that Alex was still living there but actually said 'Alex is still living'.

53. In question 2 both said, apart from spelling errors and one comma, 'you are not supposed to take any payments and not expect either that can be contributed as ex gratia payment'. Again it is curious phraseology and not, in the Tribunal's view, anything that could have been copied from a revision note as it clearly address an issue peculiar to the question. Immediately after that both started the next phrase with a capital letter even though it was in the middle of a sentence. Both wrote 'But as they have not served you the notice and this can be considered as income in lieu of notice', save that Mr Ashraf misspelt 'lieu'. In the next sentence both have written 'get this as a loss of office as there is no guideline available from history.' In the same question both wrote 'If a uk investor disposes off his units' rather that 'disposes of his units'. In question 4 they both wrote 'you will income tax on the benefit'. As was accepted by Mr Tayyab in evidence, there is clearly a verb missing. The chances of these phrases, and the many other identical phrases that appear in the Respondents answers, all being found in their revision notes is so vanishingly small it can be dismissed as a realistic possibility.

54. Mr Tayyab's response to question 4 begins 'Further to your letter dated 5 Nov 2020 I would like to congratulate you on your new job and I have drafted the points and tax implication in relation to you benefits received.'. Mr Ashraf's response begins 'In regard to your letter dated 5th November 2020 I would like to say congratulation to you

on your new job and i have set out the points below and tax implication in regards your benefits received.' The similarity is striking and again not explicable by having shared notes.

55. For question 5 both have written, apart from spelling mistakes, 'Further charge will be as follows when the restriction is lifted. Charge will be the percentage . . .' The omission of the definite article at the start of both sentences, followed by an identical choice of words, is not explicable on the basis of revision notes. Notably, in the same question both gave a formula to calculate the tax after a restriction is lifted. Mr Tayyab gave the formula as:

'(Unrestricted Value – Restricted Value)/Unrestricted Value'

whereas Mr Ashraf wrote:

'Unrestricted value – Restricted Value'.

56. As was accepted in oral evidence, Mr Ashraf's version was wrong because it lacked the dividing factor. However, despite that he had got the same calculation as Mr Tayyab, namely:

5-4/5*100%=20%

57. Differences between the two scripts in terms of spelling mistakes and, in this case, missing part of a formula, are explicable on the basis that text could not be cut and pasted. To copy each other's answers, they would have to re-type them onto their own screen. That would have been easy to do, given that they were in the same building when they were sitting the exam. They could look at each other's screens, or share pictures of them, send messages to each other or even discuss the answers between themselves. What is not explicable on any innocent basis is the extraordinarily close correlation between their answers to the questions, as shown by the extracts in the table above.

58. Neither Respondent was initially forthcoming with the information that they jointly prepared revision notes or, indeed, that they had sat the exam in the same building. In particular the Tribunal noted that, on 15 January 2021, Mr Ashraf wrote to the CIOT saying 'I am surprised to know that my answers have a similarity with another

candidate's answer. . .' That flatly contradicts the evidence he gave at the hearing, which was that it was not surprising his answers are very similar to another candidate's because they were working from the same revision notes.

59. Mr Tayyab in his initial response said:

> 'I had meticulously prepared all my notes and course materials for the day on all the possible topics. When I sat the paper, after reading the question paper I made the notes to the relevant questions from the question bank and the notes from my Tolly [sic] tutors. . .
>
> I went through every part of the syllabus and highlighted everything that I needed to take help on the day.'

60. This picture this paints of Mr Tayyab working alone on his preparation is to be contrasted with the evidence that both Respondents gave at trial, which was that they had prepared their notes together. Mr Tayyab said in his oral evidence 'We prepared the final set of notes, with mutual preparation with Mr Ashraf and myself.' Mr Ashraf said in his oral evidence 'Because we were friends, we revised and practised for the exam together. . . We prepared some handwritten notes we were preparing the notes together'.

61. Mr Tayyab and Mr Ashraf both sent written representations to the TDB and both made statements for the Disciplinary Tribunal hearing. There were therefore four opportunities, after they had seen the evidence in support of the allegation, for them to explain that they had jointly prepared revision notes and these were so comprehensive that it explains why their answers were so similar. Only Mr Tayyab in his witness statement made mention of this line of defence. Mr Ashraf did not give this explanation until the hearing. Neither gave this explanation in their letters to the TDB. Mr Ashraf said in his letter 'I do not know who the other candidate is', which seems an extraordinary thing to say, given the evidence he gave at the hearing.

62. Mr Ashraf did not mention, until the hearing, that they had been in same premises when they sat the exam. Indeed, he said in his letter of 15 January 2021 that 'there was no other candidate present' when he took the exam. A more forthcoming answer would have been that there was another candidate present in the same office premises, albeit

in a different part of them. It was not until Mr Tayyab's witness statement dated 13 August 2021 that either of them said that they had been in the same building.

63. The explanation that both had independently either destroyed or lost their notes, given that they either knew an investigation was being carried out or that they needed to re-sit the exam, was to put it at its lowest surprising. Further, the Tribunal considered that there was force in Mr Gilbert's submission that Mr Tayyab had changed his story during his oral evidence about whether he was or was not able to still produce his copy of the notes.

64. When questioned by Mr Holland, Mr Tayyab said:

> 'So again I will try to bring to the attention of the panel that like I said these general comments were prepared and pre-prepared from the notes that we haven't picked up from there and these mistakes, we don't really care. You can come and see my notes. I have the diary.'

65. He was asked again about the notes when the Disciplinary Tribunal asked questions.

> 'Q. And could I ask where either of those copies are now?
>
> A. They were only a few pages and after the exam you don't really need them. We have so many notes like these study materials. If you look at our material, I think they add up to that bundle and because it was the last sitting of November and the following year the syllabus changes most of the time, sorry, mostly. Every single year that is compulsory, the syllabus changes and those pages we just didn't care. Probably we got rid of them. I tried to find them but I couldn't.
>
> Q. Right. So you didn't deliberately destroy them but you can't find them.
>
> A. Yes, because still I have some 2020 material, some of them, but I was trying to look. There was so much in my room still, so like I said, there were only a few of them and they were loose kind of papers so I don't have them right now. I couldn't find them.'

66. Mr Tayyab therefore initially said the notes were available, then that he had probably got rid of them. His final position was that he had not deliberately destroyed them. Indeed, he had looked for them but could not find them. All three cannot be true. Further, it is not clear why Mr Tayyab felt the need to explain why the notes would be of no further use if, as he ultimately accepted, he had retained them but simply could not locate them.

67. When Mr Ashraf came to give evidence he also said he could not find his copy of the notes. He also gave an explanation as to why the notes would not be relevant for a future exam, which again is curious given that he was not claiming he destroyed the notes, simply that he could not find them. What is most surprising of all, given that both Respondents knew within three months of sitting the exam that they were under investigation, is the coincidence of both being unable to locate their copy.

68. But the overwhelming feature of this case is the astonishing similarities between the answers of both candidates which cannot, on any reasonable or rational view, be explained by them working from the same notes. In addition, there was evidence from the Chief Examiner that 'the scale of similarities is such that it is inconceivable that it could be purely by chance'.

69. The Disciplinary Tribunal did not address the issues we have set out above in its decision, and therefore we are forced to conclude it did not properly consider them. Had it done so, it would have been inevitably drawn to the conclusion that the Respondents colluded during the exam. The Tribunal is satisfied that a proper evaluation of the evidence can lead to only one conclusion, namely that the Respondents had colluded in the preparation of their answers.

70. We do not consider that the advantage the Disciplinary Tribunal had over us, namely of seeing and hearing the witnesses rather than just reading a transcript of their evidence, can explain the decision it made. Nor did Mr Holland suggest that this advantage would be so significant as to render a re-evaluation of the evidence unfair. Further we note that the Disciplinary Tribunal did not, in fact, make any finding as to the credibility of the witnesses. It simply said that the Appellant had failed to show that collusion took place during the exam and had not met the burden of proof. For the reasons given above, the Tribunal is satisfied that this finding was plainly wrong.

71. The similarities were so striking that they are not explicable on the basis of shared notes, particularly as they include a large number of sentences and phrases which address specific issues raised by the facts of the question and, therefore, could not have been prepared in advance.

72. The Tribunal is of the view that the Disciplinary Tribunal may not have been helped by the way the case was presented to it. We note that the Appellant claims it was ambushed and that the hearing should have been adjourned. Whilst we reject the characterisation of the Respondents' case as an ambush, given that the case they ultimately pursued was set out in Mr Tayyab's witness statement, it may well be that the Appellant was not as prepared as it should have been to meet this case. Further, we did not find the way the Chief Examiner had highlighted the similarities, by picking out text in the answers in different colours, was particularly helpful. The Tribunal found that a better way to compare the answers was to put them side-by-side, which is what we have done above.

73. The Tribunal therefore finds that the decision of the Disciplinary Tribunal was wrong, and the second ground of appeal under regulation 21.4(b)(i) succeeds. As Regulation 24.6 does not apply, there is no power to remit this matter for a rehearing, and therefore we must substitute our own decision on the charges for that of the Disciplinary Tribunal.

Charge 1.1

74. Charge 1.1 is proved against both Respondents for the reasons given above. The Tribunal is satisfied the Respondents colluded in preparing their exam answers.

Charge 1.2

75. Mr Tayyab accepted in his evidence that he knew colluding in an exam would amount to a breach of the Examination Regulations and it clearly does. Both had sat professional exams before and were clearly aware that cheating is not permitted. They had been provided with copies of the Exam Regulations. The Tribunal found Charge 1.2 proved against both Respondents.

Charge 1.3(a)

76. Charge 1.3(a) alleges that the Respondents breached rules 2.1 and 2.2.1 of the PRPG in that they acted dishonestly and in breach of the fundamental principle of integrity. The

fundamental principle of integrity requires a member to be straightforward and honest in all professional and business relationships. Rule 2.2.1 of the PRPG 2018 requires a member to be honest in all their professional work. In order to find Charge 1.3(a) proved, therefore, the Tribunal had to be satisfied that the Respondents' conduct as set out in Charges 1.1 and 1.2 was dishonest.

77. The Tribunal approached the issue of dishonesty on the basis set out by the Supreme Court in *Ivey v Genting Casinos (UK) Limited*. The Tribunal was in no doubt that the Respondents knew that, by colluding on their answers, they were cheating in a professional examination. This would be regarded as dishonest by the standards of ordinary and honest members of the public. The Tribunal was satisfied the Respondents' actions as set out in Charges 1.1 and 1.2 were dishonest and that Charge 1.3(a) was therefore proved.

Charge 1.3(b)

78. Charge 1.3(b) alleges that the Respondents breached rules 2.1, 2.6.2 and/or 2.6.3 of the PRPG. Rule 2.1 of the PRPG sets out the fundamental principle of professional behaviour, which requires a member to comply with relevant laws and regulations and avoid any action that discredits the profession. Rule 2.6.2 of the PRPG requires a member to uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT and take due care in their professional conduct and professional dealings. Rule 2.6.3 of the PRPG 2018 also prohibits members from conducting themselves in an unbefitting, unlawful or illegal manner, which tends to bring discredit on themselves, or which may harm the standing of the profession or the CIOT.

79. The charge alleges that the Respondents breached these rules in four different ways, namely that they:

> (i) failed to uphold the professional standards of the CIOT as set out in the Laws of the CIOT and ATT;
>
> (ii) failed to take due care in their professional conduct and professional dealings;

(iii) performed their professional work improperly or negligently to such an extent as to be likely to bring discredit to themselves, to the CIOT or to the tax profession;

(iv) conducted themselves in an unbefitting or unlawful manner, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT.

80. The Tribunal did not consider that either (ii) or (iii) appropriately described the misconduct in this case. It is not apt to categorise cheating in an exam as a failure to take due care or as negligent or improper work.

81. However, the Tribunal was satisfied that it does amount to a failure to uphold professional standards and is conduct unbefitting a member. The Tribunal was further satisfied that this would amount to a breach of rules 2.1, 2.6.2 and 2.6.3 of the PRPG. The Tribunal therefore found Charge 1(3)(b) proved against both Respondents on the basis of (i) and (iv).

SANCTION:

82. In determining what, if any, sanction to impose the Tribunal had regard to the Indicative Sanctions Guidance ('ISG'), all the evidence in the case and the submissions that had been made. The Tribunal bore in mind that the case of each Respondent should be considered separately, although it found in the particular circumstances of this case that its reasoning on sanction was identical for both.

83. 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.

84. 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.

85. The Tribunal considered that the Respondents previous good record was a mitigating factor. The Tribunal did not identify any other mitigating or aggravating factors.

86. The Tribunal noted that the guideline sanction in the ISG for misconduct in relation to exams, including obtaining improper assistance from another, is removal from the student register.

87. The Tribunal considered lesser sanctions than removal from the register, which include warning, censure and suspension. It also considered its power to make an order that a student is not granted membership of one of the member bodies for a specified period or rendering them ineligible to sit any examination for a specified period. It did not consider that any of these sanctions, either individually or in combination, would be sufficient to meet the public interest in this case.

88. The Tribunal concluded that the only appropriate and proportionate sanction was removal from the student register. Cheating in a professional exam undermines the integrity of the exam system. It was, in the Tribunal's view, conduct that is fundamentally incompatible with continuing registration of any member body. To impose any lesser sanction would undermine confidence in the profession. Further, the Tribunal could identify no good reason to depart from the guideline sanction in the ISG.

89. Therefore, pursuant to regulation 20.6(f)(x) of the Disciplinary Regulations, the Tribunal recommends that Mr Ashraf and Mr Tayyab are removed from the student register of the CIOT.

COSTS:

90. Mr Gilbert on behalf of the Appellant applied for costs in the sum of £9,681.00. Mr Holland opposed the application. He submitted that there should be no order for costs or, at worst, the Respondents should not have to pay costs in respect of the appeal hearing given that it was not their fault this hearing had taken place.

91. The Tribunal had regard to the Guidance on Awarding Costs. The presumption is that a 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.

92. However, the Tribunal agreed that this principle should not extend to requiring the Respondents to pay the costs of the appeal as well as the hearing before the Disciplinary Tribunal, given that matters could, and should in the Tribunal's view, have been

concluded at that stage. The Tribunal also considered it was right to take into account that the Respondents are likely to have been put to extra expense by engaging Mr Holland on a second occasion.

93. In the Tribunal's view, the appropriate amount to allow in respect of costs was £4,000. This should be divided equally between the Respondents. Therefore, Mr Ashraf and Mr Tayyab are ordered to pay costs of £2,000 each to the TDB.

94. Pursuant to regulation 27.1 of the Disciplinary Regulations, the costs are payable within 28 days of the service of this order.

PUBLICITY:

95. 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 Respondents.

EFFECTIVE DATE:

96. Pursuant to regulation 20.9 of the Disciplinary Regulations, this decision will be treated as effective from the date on which it is deemed served on the Respondents.

Andrew Granville Stafford
(Chair)
31.1.2022