

THE TAXATION DISCIPLINARY BOARD

– and –

MR MARTIN SCULLION
(ATT Member no. 153815)

DECISION AND REASONS

Date of Hearing	16 May 2023
Venue	Virtual using Microsoft Teams
Tribunal Members	
Legally Qualified Chair	Ian Comfort
Professional Member	Julian Stafford
Lay Member	Sadia Zouq
Tribunal Clerk	Nigel Bremner
Mr Scullion	Present and not represented

Charges

Charge 1

1.1 *On 14 October 2021, Mr Scullion, accepted a police caution for a criminal offence, namely assault by beating.*

1.2 *By reason of 1.1:*

- (a) *The Defendant has engaged in or been party to illegal behaviour, contrary to rule 2.2.2 of the PRPG; and/or*
- (b) *The Defendant has conducted himself in an unbecoming, unlawful or illegal manner, which tends to bring discredit upon himself, and/or may harm the standing of the profession, and/or the ATT, contrary to rule 2.6.3 of the PRPG.*

Charge 2

2.1 *Mr Scullion failed to inform the Head of Professional Standards at the ATT in writing of his accepting a police caution within two months of 14 October 2021.*

2.2 *By reason of the above, the defendant breached rule 2.14.1 of the PRPG, as amended on one January 2021.*

Simplified procedure

1. The Tribunal considered this matter under the simplified procedure pursuant to Regulation 15 of the Taxation Disciplinary Board Scheme Regulations 2014 (as amended on November 2016) (“the Regulations”).

Background

2. On 14 October 2021, Mr Scullion received a police caution for common assault.
3. On 13 January 2022 Mr Scullion disclosed the police caution in his Annual Return and also in a letter of the same date having become aware of the requirement to inform ATT in writing within 2 months of the caution. The requirement to report was introduced in 2021 and was not known to the Mr Scullion at the time. Mr Scullion also reported the caution to the Institute of Chartered Accountants for England and Wales (“ICAEW”) , of which he is a member. The ICAEW determined the complaint on 6 July 2022.

Evidence

4. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - (i) Response Form from Mr Scullion;
 - (ii) Record of police caution;
 - (iii) ICAEW complaint form and sanction; and
 - (iv) Email from Mr Scullion to ATT disclosing caution.

Admissions and Finding

5. In his Response Form Mr Scullion admitted charges 1.1, 1.2(a) and charge 2. He also admitted charge 1.2(b) in so far as he accepted that he conducted himself in an unbecoming, unlawful, illegal manner, which tends to bring discredit upon himself. He did not accept that his conduct may harm the standing of the profession and/or the ATT.
6. Mr Mills, on behalf of the TDB, said that assault is a serious matter even if it is dealt with by way of a caution. He submitted that a member of the public would be concerned if they knew that a member of the profession had engaged in an act of violence. He submitted that such conduct may harm the standing of the profession.
7. Mr Mills referred the Tribunal to the case of *Beckwith v SRA [2020] EWHC 3231 (Admi)* and in particular paragraph 43:

“... There is a qualitative distinction between conduct that does or may tend to undermine public trust in the solicitor's profession and conduct that would be generally regarded as wrong, inappropriate or even for the person concerned, disgraceful. Whether that line between personal opprobrium on the one hand and harm to the standing of the person as a provider of legal services or harm to the profession per se on the other hand has been crossed, will be a matter of assessment for the Tribunal from case to case, but where that line lies must depend on a proper understanding of the standards contained in the Handbook.”
8. Mr Scullion outlined the background to the caution, which he had set out in writing in his response to the Head of Professional Standards at the ATT. He said that that this was an isolated incident that had taken place at a time when he was under significant personal pressures. He said that he immediately accepted his responsibility and that there have been no further concerns. He submitted that a fully informed member of the public would not consider that his conduct harmed or may harm the standing of the profession or ATT.
9. The Tribunal considered the case of *Beckwith* and rule 2.6.3 of the Professional Rules and Practice Guidelines (November 2019 as amended 1 January 2021) (“PRPG”):

“ A member must not Conduct themselves in an unbecoming, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT or ATT (as the case may be). For the avoidance of doubt, conduct in

this context includes (but is not limited to) conduct as part of a personal or private life.”

10. The Tribunal considered the submissions of the parties. It took account of the personal circumstances of Mr Scullion at the time of the assault in October 2021 and the fact that it had been dealt with by way of a simple caution. Having considered all of the circumstances the Tribunal concluded that this was not a matter where Mr Scullion’s conduct was such that it had crossed the line where it may cause harm to the standing of the profession or to AAT.
11. On the basis of the admissions the Tribunal found charges 1.1, 1.2(a) 1.2(b) (first limb), 2.1 and 2.2 proved.

Sanction

12. Having found the charges proved in relation to Mr Scullion the Tribunal decided in accordance with Regulation 20.6 what action, if any, it should take.
13. Mr Mills referred the Tribunal to Taxation Disciplinary Board’s Indicative Sanctions Guidance of December 2020 (revised January 2022) (“the Guidance”) and in particular to section 2 (Criminal convictions unrelated to professional work). He acknowledged that a caution was not a criminal conviction but suggested that that this section of the Guidance would assist the Tribunal when considering this matter. Mr Mills also referred the Tribunal to section 8 of the Guidance (Other breaches of Bye-laws or Regulations) in relation to failing to report the caution to the ATT within two months.
14. Mr Scullion submitted that he had admitted his failings and that a severe sanction was not necessary. He said that there was no risk of repetition of his behaviour and he had shown remorse. He said that his failure to disclose was only one month late and this was due to difficulty in finding the process on the internet.
15. In deciding on the appropriate sanction, the Tribunal considered the Guidance in general and sections 2 and 8. It and also noted the sanctions imposed in other similar cases, as recorded in Annex D to the Guidance. It 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.
16. 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’.

17. The Clerk informed the Tribunal that there were no previous regulatory concerns regarding Mr Scullion.
18. The Tribunal considered the aggravating and mitigating factors and referred to section 2 of the Guidance and to the Guidance in general.
19. In relation to the caution it found that there were no aggravating factors. In mitigation the matter was not committed in a professional capacity, was an isolated incident, he had admitted the assault straight away, had shown insight and remorse and had cooperated fully with his regulator. The Tribunal also considered his personal mitigation.
20. In relation to the breach of the bye-law in failing to disclose the caution within the agreed time-frame, the Tribunal found that there were no aggravating factors. In mitigation, the breach was rectified swiftly and the delay in disclosing was for a short period of time. The Tribunal did not find that Mr Scullion had deliberately failed to disclose nor was he reckless.
21. Having considered the evidence, the Tribunal was satisfied that taking no further action was not appropriate in this matter.
22. The Tribunal considered that this was an isolated incident and that the misconduct was unlikely to be repeated. It took account of how the matter had been disposed of by the ICAEW. In the circumstances the Tribunal determined that the appropriate and proportionate sanction to address the public interest in the matter was to order that the matter rest on file for a period of 12 months.

Costs

23. The Tribunal had regard to Annex C of the Guidance on the awarding of 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 is 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.
24. The power to award costs was discretionary. The general principle required exceptional circumstances for a Tribunal not to award costs against an

unsuccessful defendant. The Tribunal considered the schedule and considered that the costs outlined were proportionately and reasonably incurred.

25. Mr Scullion did not object to the costs and agreed that the cost would be paid in full within 28 days.
26. The Tribunal ordered that costs in the sum of £2568 be paid by Mr Scullion.

Publication

27. The Tribunal noted the contents of Annex B of the Guidance on the publication of disciplinary and appeal findings and Regulation 28.
28. It noted the general principle that any disciplinary finding made against a member would be published and the member named in the publication of the finding. The purpose of publishing such a decision was not to add further punishment for the member. It was to provide reassurance that the public interest was being protected and that where a complaint was made against a member of one of the professional bodies covered by the Taxation Disciplinary Scheme, there were defined, transparent procedures for examining the complaint in a professional manner and for imposing a sanction upon a member against whom a disciplinary charge had been proved.
29. The Tribunal further noted that under Regulation 28.3, it had a discretion to order that the name of the member or the details of orders made against them should not be published. The Tribunal received submissions from Mr Scullion regarding publicity. It noted his concerns and agreed that subject to appropriate redactions to protect the interests of third parties it did not have to exercise its discretion.
30. 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. 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