

THE DISCIPLINARY TRIBUNAL
OF THE TAXATION DISCIPLINARY BOARD

TDB/2021/29

TAXATION DISCIPLINARY BOARD
(TDB)

v.

Mr DEE SHAH
(ATT Membership Number 124514)

DECISION

INTRODUCTION:

1. The Disciplinary Tribunal (the Tribunal) sat on 30 May 2023 via videolink to consider two charges against Mr Dee Shah. The Tribunal was chaired by Mr Mark Ruffell (barrister) who was sitting with Ms Lorna Jacobs (lay member) and Mr Ian Luder (professional member). TDB was represented by Mr Oliver Small (counsel). Mr Shah attended the hearing but was not separately represented.
2. The Tribunal had read and considered the case summary and case papers (pages 1 to 28) and the Supplementary Bundle (pages 1-32).

CHARGES:

3. Charge 1 – Illegal and Unbefitting Conduct.
 - 1.1. On or around 17 January 2021, the Defendant was convicted at Surrey Magistrates' Court of one charge of driving a motor vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeded the prescribed limit.

1.2. On or around 17 January 2021, in respect of this charge, the Defendant was issued with a fine and disqualified from holding or obtaining a driving licence for 12 months.

1.3. By reason of the matters identified in 1.1 and 1.2 above:

(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.

4. Charge 2 – Failure to Notify

2.1. The Defendant failed to inform the Head of Professional Services at the ATT in writing of his criminal conviction (as referred to above) within two months of the 18th January 2021.

2.2. By reason of the above, the defendant breached rule 2.14.1 of the PRPG, as amended on 1 January 2021.

5. Mr Shah admitted charges 1.1, 1.2, 1.3(a), 2.1 and 2.2. Mr Shah admitted charge 1.3 (b) on a basis, namely that he admitted bringing discredit on himself but not on the profession or on ATT. Mr Small on behalf of TDB confirmed that this basis of plea was satisfactory and that TDB did not wish to pursue the parts of the charge that alleged that Mr Shah had brought discredit to the profession or ATT. The Tribunal therefore found all charges proved by admission and accepted Mr Shah's basis of plea to charge 1.3(b).

BACKGROUND:

6. On 5 September 2020, Mr Shah was stopped whilst driving his Aston Martin DE65 HAH in Longcross Road in Longcross, Surrey. Following an arrest on suspicion of driving with excess alcohol a sample of blood was taken from him. An analysis of that sample of blood revealed that it contained 100 milligrams of alcohol per 100 millilitres of blood. The prescribed limit is 80 milligrams of alcohol per 100 millilitres of blood. Mr Shah appeared at Staines Magistrates' Court on 18 January

2021. He pleaded guilty to driving with excess alcohol. He received a Fine of £250 and was required to pay the Victim Surcharge of £34 and Costs of £85. He was disqualified from driving for 12 months (the statutory minimum) but the disqualification could be reduced by 3 months if by 17 August 2021 he had satisfactorily completed a course approved by the Secretary of State.

7. On 26 November 2021, Mr Shah submitted his 2021 Annual Return to ATT and disclosed to ATT that he had been convicted of the aforementioned motoring offence.
8. On 30 November 2021, ATT referred Mr Shah to the TDB on the ground of not disclosing his conviction in a timely manner.
9. TDB wrote to Mr Shah on 17 October 2022, detailing the complaint against him. Mr Shah responded on 19 October 2022 apologising for the failure to notify but stating that he was unaware of the need to report a motoring conviction. The rule change requiring notification of summary only motoring convictions came into force on 1 January 2021. The change to the rules was publicised in November 2020 in the Tax Adviser magazine and in ATT weekly news. ATT's website was updated on 5 January 2021.
10. Mr Small submitted that the Tribunal should have regard to the Indicative Sanctions Guidance and the section entitled 'Criminal convictions unrelated to professional work.' He drew to the Tribunal's attention that it was only shortly before the conviction that the two month reporting requirement was in place, Mr Shah had co-operated with the TDB during its investigation and he had made early admissions.
11. Mr Shah submitted to the Tribunal that this was a one-off event during the pandemic. He had been to his golf club and was returning after having had a drink. He did not normally have a drink after a game. He was persuaded to have a drink and regretted it. He had been punished by the Courts and suffered from that. His conviction was independent from his work and it was his first driving offence. In relation to the non-reporting of the conviction, Mr Shah stated that the rules had changed and although there was an article in Tax Advisor, he did not see it as he did not always receive a copy. In addition, the email in November 2020 may have

come during a busy period of his business and it went unread. He had been a member of AAT for over 20 years and this was the first time that he had come before any disciplinary body. He had co-operated with TDB throughout. He appreciated that he needed to take more care of any notifications received from ATT. He stated that if the Tribunal considered that the costs application was reasonable, then he could afford to pay it. He made it clear that he would have accepted a penalty without the need for a hearing.

DECISION ON SANCTION:

12. The Committee had regard to the Indicative Sanctions Guidance and that the purpose of a sanction is to protect the public, to uphold the proper standards of conduct in the profession and to maintain the reputation of the profession.
13. The Tribunal noted that the wording of the publicity by ATT concerning the changes to Rule 2.14 was ambiguous as to whether it was the offence or the conviction that had to have been committed after 1 January 2021. Mr Shah had not seen the publicity and therefore had not been misled. It noted that the rule changes and the publicity occurred during the period where accountants were most busy and this may have contributed to Mr Shah's lack of knowledge of the rule change.
14. The Tribunal noted that Mr Shah had submitted his annual return on time and was open and honest about his conviction, whilst remaining ignorant of the rule change.
15. The Tribunal considered that the criminal conviction, whilst serious, was at the lower end of the spectrum of offences and was dealt with by way of a lenient penalty by the Magistrates' Court due to Mr Shah being only a little over the prescribed limit. The Tribunal noted by way of mitigation that Mr Shah had been a member of ATT for over 20 years and had not previously appeared before a disciplinary committee. In addition, he had co-operated with TDB in its investigation.
16. The Tribunal did not consider that taking no further action or an order to rest on the file, or a warning were appropriate sanctions for a criminal conviction. The Tribunal noted that *'a censure is appropriate where the misconduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy*

the Tribunal that there is no risk to the public and similar relevant factors to those under 'Warning' are present.' The Tribunal considered that a criminal conviction for driving with excess alcohol was a serious matter but there was no ongoing risk to the public, Mr Shah regretted his actions, he had a previous good history and it was unlikely that there would be a repetition. In all the circumstances of the case, the Tribunal considered that the appropriate sanction for charge 1 was one of censure.

17. In relation to charge 2, the Tribunal noted that had the rule change not come into effect, Mr Shah had complied with the previous rules in that he had notified ATT of the conviction at the appropriate time in his Annual Return. The Tribunal considered that there was nothing to suggest that Mr Shah had deliberately not revealed the conviction in accordance with the new rule. Likewise, there was nothing to suggest that the profession or the public had been harmed by the late disclosure by Mr Shah. Accordingly, the Tribunal considered that it would be fair and proportionate not to impose any additional sanction on charge 2, in the light of the sanction on charge 1.

COSTS:

18. TDB applied for costs in the sum of £2,724.00. The Tribunal considered that the sum of £2,724.00 was reasonable and proportionate and noted that Mr Shah had agreed that he had the ability to pay it. The Tribunal directed that the sum of £2,724.00 should be paid by Mr Shah within 28 days.

PUBLICITY:

19. The decision should be publicised in the usual way.

MARK B. RUFFELL

Chairman

30 May 2023