

**IN THE DISCIPLINARY TRIBUNAL OF THE
TAXATION DISCIPLINARY TRIBUNAL**

Ref. TBD/2022/12

**THE TAXATION DISCIPLINARY
BOARD**

TDB

-and-

**MR CHRISTOPHER BUGDEN
(CIOT 134762)**

Defendant

DECISION AND REASONS

Date of Hearing	11 January 2024
Venue	Virtual using Microsoft Teams
Tribunal Members	
Legally Qualified Chair	Brett Wilson
Professional Member	Stuart Mckinnon
Lay Member	Annabel Joester
Tribunal Clerk	Nigel Bremner
Taxation Disciplinary Board (‘TBD’)	Represented by Mr O’Leary of Counsel
Mr Bugden	In person

Background

1. Mr Bugden is a member of the Chartered Institute of Taxation ('CIOT').
2. On 3 March 2022, the CIOT referred Mr Bugden to the TDB. The referral related to Mr Bugden declaring on his 2021 annual return submitted on 2 March 2022 that he had been convicted of a drink-driving offence. Mr Bugden later informed the CIOT that the date of the conviction was 9 June 2021. Changes to the Professional Rules and Practice Guidelines effective from 09 November 2018 and amended from 1 January 2021 (the 'PRPG 2018') required members to inform the CIOT or ATT if, on or after 1 January 2021, they are convicted of a criminal offence or on or after 1 January 2021, they are convicted of summary only road traffic offences.

Evidence

3. The Tribunal had regard to the bundle of 32 pages and the supplementary bundle (8 pages). This evidence included but was not limited to:
 - a. the memorandum of conviction from Sussex (Central) Magistrates' Court;
 - b. correspondence between the TDB and Mr Bugden which included a letter from Mr Bugden explaining the circumstances which led to his conviction and a summary of the proceedings at court when he was sentenced;
 - c. Mr Bugden's completed response form; and
 - d. a number of character references.

Procedure

4. The charges (set out in Appendix 1 of this decision) related to the Professional Rules and Practice Guidelines 2018 of the CIOT and the Association of Taxation Technicians ('ATT') (the 'PRPG 2018') in force from 9 November 2018. The sections of the PRPG 2018 referred to in the charges are set out in Appendix 2 of this decision.
5. As to Charge 1, Mr Bugden admitted the particulars set out in 1.1, 1.2.1, 1.2.2 and 1.2.3.
6. Mr Bugden gave a qualified response to particular 1.2.4 and therefore the Tribunal considered his response to be a denial of particular 1.2.4.

7. Mr Bugden admitted Charges 2 and 3 in their entirety.

Findings

8. The Tribunal heard evidence from Mr Bugden. Mr Bugden stated that although the court imposed a driving disqualification of 12 months, he was offered the opportunity of reducing the period of disqualification to 9 months upon completion of the awareness course. He told the Tribunal that he confirmed acceptance of the course at court and so when he left the court he was of the view that his period of disqualification was 9 months. Mr Bugden also described the circumstances leading up to the accident. He said that at the time he had been prescribed 'blood-thinners' and that he had been informed by his doctor that it could have been the medication that caused him to fall asleep whilst driving. The Tribunal noted that Mr Bugden had not provided any medical evidence to support that assertion and he did not present any medical evidence to the magistrates' court when he pleaded guilty.
9. Mr Bugden was not cross-examined and the Tribunal heard submissions regarding particular 1.2.4 of Charge 1 from counsel for the TDB and Mr Bugden.
10. The Tribunal reminded itself that the burden of proving the charges rested on the TDB and that the standard of proof was the civil standard.
11. The Tribunal found, on the basis of the evidence that the facts of particular 1.2.4 of were proved.
12. In reaching its decision, the Tribunal applied regulations 30.4 and 30.5 of The Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016) (the 'Regulations').
13. Rule 30.4 states that strict rules of evidence shall not apply in proceedings before the Disciplinary Tribunal. Rule 30.5(a) conviction of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence. Proof of a conviction in this manner shall constitute conclusive evidence that the relevant party was guilty of the offence the subject thereof.
14. The Tribunal noted that the memorandum of conviction stated that the court imposed a disqualification from driving for a period of 12 months. That was an obligatory period of

disqualification. The period of disqualification was to be reduced by 13 weeks if by 09.01.2022, Mr Bugden satisfactorily completed a course approved by the Secretary of State.

15. The Tribunal concluded that the court had imposed a 12-month period of disqualification which was prescribed by law and the reduction on the period of disqualification would only take effect if (noting that the word 'if' is used in the memorandum of conviction) Mr Bugden satisfactorily completed the required course. Therefore, whilst Mr Bugden may have informed the court that he intended to complete the course, that indication of intent did not by itself result in an immediate reduction in the disqualification period.
16. The Tribunal concluded that the memorandum of conviction was also conclusive of particulars 1.1, 1.2.1, 1.2.2 and 1.2.3 and, notwithstanding Mr Bugden's admissions, those particulars were proved. Therefore, the Tribunal found Charge 1 proved.
17. The Tribunal proceeded to consider charge 2. The Tribunal was of the view that having found charge 1 proved, Mr Bugden, having been convicted of a criminal offence could be said to have engaged in illegal behaviour. The Tribunal noted that there was no definition, in case law or in the PRPG 2018, of what acts or omissions could amount to bringing discredit on a professional or CIOT or ATT or what would be considered to be unbecoming conduct. The Tribunal was of the view that the common meaning of those words should be applied. The Tribunal further noted that the wording of rule 2.6.3 of the PRPG 2018 did not require actual harm to have been caused but the use of the words 'likely to bring discredit...' and '...which tends to bring discredit upon a member and/or may harm the standing...' confers a mere potential of the conduct complained of to discredit or cause harm. The underlined words are emphasised by the Tribunal.
18. The Tribunal concluded that, in relation to charge 2, notwithstanding Mr Bugden's admissions of the charges, the behaviour of Mr Bugden in consuming alcohol at a lunch with a client at about 1pm to 2pm, later driving his car, falling asleep at the wheel and crashing at around 6pm could bring discredit on him, his profession, the CIOT and the ATT because being over the legally prescribed limit of alcohol whilst driving. Whilst the Tribunal was not provided with any medical evidence to support Mr Bugden's assertion that it was the 'blood-thinners' which had caused him to fall asleep, the Tribunal was of the view that a responsible person would have checked to ensure that it was safe to

consume any alcohol at all whilst taking the medication and/or that it was safe to drive (whether having consumed alcohol or not) and it was on the whole irresponsible behaviour that an objective member of the public would not expect from a professional.

19. Therefore, the Tribunal found charge 2 proven.
20. As to charge 3, the Tribunal noted that rule 2.14.2 of the PRPG 2018 imposed a strict liability or duty on a CIOT or ATT member to notify CIOT / ATT (as the case may be) within 2 months. The Tribunal considered the email from the CIOT dated 3 March 2022 which stated that Mr Bugden made it aware of the conviction in his 2021 annual return which he submitted on 2 March 2022. The email also stated that when Mr Bugden was asked for the date of the conviction he confirmed that it was 9 June 2021. The Tribunal noted that there was no evidence to suggest that Mr Bugden informed CIOT of his conviction prior to submitting his 2021 annual return. The Tribunal noted Mr Bugden's admission of charge 3 and given that the period from 9 June 2021 to 2 March 2022 is more than 2 months, it found charge 2 proved.
21. The Tribunal therefore found that Mr Bugden was in breach of the following:
 - a. Rule 2.2.2 of the PRPG 2018 in that, by virtue of his conviction on 9 June 2021, Mr Bugden was a party to and/or had engaged in illegal behaviour
 - b. Rule 2.6.3 of the PRPG 2018 in that Mr Bugden by consuming such a quantity of alcohol with a client (and at a time whilst he was also taking prescribed medication) that when he drove his car some 4 hours later, he fell asleep, crashed the car and was found to be over the legal limit for alcohol whilst driving, had conducted himself in an unbecoming manner which tends to bring discredit upon himself or may harm the standing of his profession or the CIOT;
 - c. Rule 2.14.2 of the PRPG 2018 in that Mr Bugden failed to notify the CIOT in writing of the conviction within the 2 months as required. The Tribunal noted that there was no evidence to suggest that Mr Bugden informed CIOT of his conviction prior to submitting his 2021 annual return. The Tribunal noted Mr Bugden's admission of charge 3 and given the period from 9 June 2021 to 2 March 2022 is more than 2 months.

Sanction

22. Having found the charges proved in relation to Mr Bugden, the Tribunal decided, in accordance with regulation 20.6 of the Regulations, what action, if any it should take.
23. In deciding on the appropriate sanction, the Tribunal considered the guidance contained in the TDB's Indicative Sanctions Guidance of December 2020 (revised January 2022 and May 2023) (the 'Guidance') and also noted the sanctions imposed in other similar cases in Annex D of the Guidance.
24. The Tribunal directed itself that in approaching the task that it should start by considering the least severe sanction and only consider more serious sanctions if satisfied that the lesser sanction was not appropriate.
25. The Tribunal noted that the purpose of imposing a sanction upon a member is not to simply discipline the individual or firm for any wrongdoing of which they 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 decides the conduct to be.
26. The Tribunal considered the aggravating and mitigating factors in making its decision. The Tribunal was informed that there had been other findings and sanctions against Mr Bugden by the TDB. In summary this was (i) in June 2020, Mr Bugden was suspended for a period of 12 months and (ii) on 2 October 2021, Mr Bugden was found not to have (a) informed the CIOT of regulatory action taken against him by ICAEW resulting in ICAEW imposing a fine of £20,000 and costs of £28,000, (b) being the subject of a complaint which resulted in a reprimand, a fine of £3,000 and costs of £10,000, (c) a breach of rule 1.7 of the PRPG 2018 and (d) providing an inaccurate statement to an interim order panel at the TDB, including a finding of dishonesty.
27. The Tribunal heard submissions on behalf of the TDB on the issue of sanction and heard mitigation from Mr Bugden. The Tribunal had regard to the letter/email which Mr Bugden had sent to the TDB and the character references from his clients. The Tribunal had regard to the fact that Mr Bugden had pleaded guilty at the magistrates' court and to the admissions which he had made in these proceedings.

28. The Tribunal noted Mr Bugden's personal mitigation. He undertook work for charities and he had completed the awareness course which the court has recommended. He had also changed his working patterns to reduce the need to drive to and from meetings. The changes that he had made also increased his use of public transport. Mr Bugden told the Tribunal that he had learned from the incident. He did not consume alcohol when he was out at social events or going to pubs or restaurants when he was driving. If he had consumed alcohol, he took a taxi home.
29. Mr Bugden told the Tribunal that, at the time, he was not aware of the need for him to inform the CIOT within 2 months of his conviction. He relied on his voluntary disclosure in his annual return.
30. The Tribunal was of the view that the aggravating features of this case were (i) the fact that when Mr Bugden was found to have been driving whilst over the prescribed limit for alcohol, he had crashed his car. There was a significant risk of harm to other road users; (ii) that whilst the accident occurred in Mr Bugden's private life, it was preceded by a lunch with a client where Mr Bugden drank alcohol knowing that he would later be driving his car, (iii) Mr Bugden was taking medication and failed to check on the effects that it could have on his ability to safely drive (whether he drank alcohol or not) and (iv) the previous findings and sanctions of the TBD which had been made fairly recently.
31. The Tribunal was of the view that whilst Mr Bugden had reduced the risk of repetition through the changes that he had made to his lifestyle and professional practice following the incident he showed limited insight into his behaviour. The Tribunal noted that in giving his mitigation, he did not express any recognition for the risk to which he exposed other road users or the impact that his behaviour could have had on his profession or the CIOT. The Tribunal noted that Mr Bugden relied heavily on the positive references from clients but did not consider what an objective bystander, appraised of all the facts and with knowledge of his profession, may think of his behaviour.
32. The Tribunal was not persuaded by Mr Bugden's plea of ignorance of his reporting requirements given the findings and sanctions of the TBD, as summarised above, which including findings of him failing to report the ICAEW matters to the CIOT. The Tribunal found it implausible that he would not have been made aware of the reporting requirements in those proceedings.

33. In relation to Charge 2, the Tribunal considered that taking No Further Action, making an Order to Rest on the File, issuing a Warning, Ordering an Apology were insufficient due to nature and seriousness of the charge.
34. The Tribunal had regard to the guideline '(2) Criminal Convictions Unrelated to Professional Work'. The Tribunal noted that the Guidance reminded it that when considering sanctions in this particular context, the member has already been punished by the criminal courts. The Tribunal noted that there was no particular sanctions suggested as a starting point.
35. The Tribunal considered the general information about the overall suitability for various sanctions contained within the Guidance. The Tribunal noted that Mr Bugden has not caused a loss to a client, he has demonstrated some appreciation of his conduct (albeit limited), the incident was isolated and there was no evidence of misconduct since.
36. The Tribunal noted that there did not appear to be evidence of regret from Mr Bugden and it could not be said that he had a previous good history. Nevertheless, the Tribunal was generally of the view that the sanction of censure was appropriate given the mitigation that it had heard from Mr Bugden.
37. In relation to charge 3, the Tribunal again was of the view that taking No Further Action, making an Order to Rest on the File, issuing a Warning, Ordering an Apology were insufficient due to nature and seriousness of the charge.
38. The Tribunal had regard to the guideline '(8) Other Breaches of Bye-Laws or Regulations' and noted that, the list of suggested misconduct where the suggested starting point was censure, included a failure to report committing a summary only road traffic offence.
39. However, given the previous findings and sanctions imposed by the TDB, the Tribunal was of the view that the sanction of censure was also insufficient. The Tribunal was of the view that failing to inform a regulatory body undermines the purpose of regulation which is to protect the public, uphold standards and maintain confidence in the profession. The Tribunal concluded that the appropriate sanction would be a fine of £750 to mark the Tribunal disappointment that this misconduct followed the previous TBD

finding but acknowledging that Mr Bugden did eventually inform the CIOT in his annual return.

Costs

40. The Tribunal had regard to Annex C of the Guidance on the awarding of costs. The Tribunal also had regard to regulations 20.6(f) and 27 of the Regulations in dealing with a Defendant against whom a charge has been proved. The presumption that 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 disciplinary proceedings upon themselves.
41. The power to award costs is discretionary. The general principle required exceptional circumstances for a Tribunal not to award costs against an unsuccessful defendant. The Tribunal considered the schedule of costs provided by the TDB and considered that the costs outlined were proportionately and reasonably incurred. The Tribunal heard Mr Bugden's submissions regarding the principle of costs and his means to pay. The Tribunal noted that Mr Bugden had made admissions at the start of the hearing but in his response to the charges (set out in his response form) he had denied particular 1.2.4 of Charge 1 and denied Charge 2 in its entirety. The Tribunal concluded that there were no exceptional circumstances to justify a departure from the general principle.
42. As to quantum, the Tribunal was of the view that the costs claimed by the Tribunal were reasonable and noted that the TBD had reduced the costs claimed due to the Tribunal being convened to hear another matter.
43. Accordingly, the Tribunal ordered that the costs in the sum of £3,127 to be paid by Mr Bugden.
44. The Tribunal considered an application made by Mr Bugden for time to pay the fine and costs beyond the usual 28 days. The Tribunal directed that Mr Bugden must pay the fine and costs ordered by 1 April 2024.

Publication

45. The Tribunal noted the contents of Annex B of the Guidance on the publication of disciplinary and appeal findings and regulation 28 of the Regulations.

46. The Tribunal noted that the general principle is that any disciplinary findings made against the 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 sanction upon a member against whom a disciplinary charge had been proved.
47. The Tribunal further noted that under regulation 28.3 of the Regulations, it had a discretion to order that the name of the member or details or orders made against them should not be published. The Tribunal heard submissions from counsel for the TDB and Mr Bugden and did not find any circumstances that would justify an order for no publicity.
48. The Tribunal ordered that, in accordance with regulations 28.1 of the Regulations, 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.
49. This decision will take effect in accordance with regulations 20.9 and 21.1 of the Regulations.

Brett Wilson
Chair, Disciplinary Tribunal
Taxation Disciplinary Board

APPENDIX 1

Charge 1

- 1.1 On 9 June 2021, the Defendant was convicted at Brighton Magistrates Court for the following offence:

Drive motor vehicle when alcohol level above limit (recordable), H21, RT88007, 803/02 / On 02/10/2020 at, B2110 Castlefields, HARTFIELD, East Sussex TN7 4JD drove a motor vehicle, namely a Mini index of LM63 GHY on a road, namely B2110 Castlefields, HARTFIELD, East Sussex TN7 4JD, after consuming so much alcohol in 100 millilitres of breath, exceeded the prescribed limit. Contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

- 1.2 As a result of the convictions set out at 1.1 the Defendant received:

- 1.2.1 A fine of £300.
- 1.2.2 An order to pay a surcharge to fund victim services of £39.
- 1.2.3 An order to pay the costs of the Crown Prosecution Service in the sum of £200.
- 1.2.4 A disqualification from driving for a period of 12 months.

Charge 2

- 2 Consequent upon the facts and matters set out in Charge 1 above:

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

Charge 3

- 3 On the 2 March 2022 the Defendant disclosed the conviction at Charge 1.1 to the CIOT. As a consequence, the Defendant failed to notify the Head of Professional Standards at CIOT within 2 months of 9th June 2021 of his conviction of a summary only road traffic offence referred to in Charge 1.1 contrary to 2.14.1.

APPENDIX 2

2.2.2 A member must not engage in or be party (directly or indirectly) to any illegal activity.

2.6.3 A member must not:

- Perform their professional work, or conduct their practice or business relationships, or perform the duties of their employment improperly, inefficiently, negligently or incompletely to such an extent or on such number of occasions as to be likely to bring discredit to themselves, to the CIOT or ATT or to the tax profession;
- Breach the Laws of the CIOT or ATT;
- 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.

2.14 Obligation to notify the CIOT and ATT – Including new requirements 1 January 2021

2.14.1 A member must inform the CIOT or ATT in writing addressed to the Head of Professional Standards CIOT or ATT as appropriate, within 2 months if they are:

- Arrested on suspicion of; or
- Charged with; or
- Convicted of a criminal offence. A criminal offence includes an offence committed in the United Kingdom or abroad.

- On or after 1 January 2021 – convicted of Summary only road traffic offences¹.
- On or after 1 January 2021 – (have) accepted a caution for a criminal offence.

A member must supply details of the nature of the allegation, conviction or caution and provide such relevant information in relation to it as is reasonably requested.

Ordinarily, CIOT or ATT will not refer a member to the TDB until the outcome of the criminal proceedings is known.