

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

Ref. TBD/2022/17

**THE TAXATION DISCIPLINARY  
BOARD**

**TDB**

**-and-**

**MR GRAEME ANDREW DAVIS  
(CIOT 136450)**

**Defendant**

---

**DECISION AND REASONS**

---

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

## **Background**

1. Mr Davis is a member of the Chartered Institute of Taxation ('CIOT').
2. On 13 February 2013, the CIOT referred Mr Davis to the TDB. The referral related to disciplinary action being taken against him by another regulator namely the Institute of Chartered Accountants of England and Wales ('ICAEW'), his expulsion from ICAEW and his failure to notify CIOT of that disciplinary action.

## **Evidence**

3. The Tribunal had regard to the bundle of 15 pages, the supplementary bundle (10 pages) and the On Table papers (12 pages). This evidence included but was not limited to:
  - a. The ICAEW Investigation Committee Decision dated 26 January 2022;
  - b. Correspondence between the TDB and Mr Davis;
  - c. Copies of Mr Davis' annual return summary forms for the periods 2021 and 2022;
  - d. Mr Davis' response to the charges; and
  - e. Correspondence between the TDB, CIOT and ICAEW.

## **Procedure**

4. Having dealt with preliminary issues in private, the Tribunal proceeded to sit in public to hear submissions from counsel for the TBD and Mr Davis in relation to the matters alleged in the charges, sanction, costs and publicity.
5. The Tribunal gave permission to the TDB to amend particular 1.1 of charge 1 by the deletion of the words, 'of the Audit Registration Committee'.
6. Mr Davis admitted the charges. The charges are set out in Appendix 1 attached hereto.

## **Findings**

7. 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.

8. The Tribunal found, on the basis of the evidence and on the basis of Mr Davis's admissions, that the charges were proved.
9. The charges 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 document.
10. In relation to charge 1, the Tribunal noted the decision notice of the ICAEW Investigation Committee dated 26 January 2022 and applied regulations 30.4 and 30.5 of The Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016) (the 'Regulations').
11. Rule 30.4 states that strict rules of evidence shall not apply in proceedings before the Disciplinary Tribunal. Rule 30.5(b) provides that the findings of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the finding and penalty. The Tribunal concluded that the ICAEW decision notice was admissible evidence and conclusive as to the findings which were made by the ICAEW Investigation Committee, that the decision was made by agreement with Mr Davis, and it confirmed that Mr Davis was to be severely reprimanded, be fined £9,000 and ordered to pay costs of £4,315.
12. The Tribunal considered the correspondence before it which had been exchanged between the TDB, CIOT and ICAEW as well as Mr Davis' admissions and concluded that Mr Davis was excluded from the membership of ICAEW due to non-payment of the fine and costs.
13. The Tribunal reminded itself that the purpose of these proceedings was not relitigate the matters that had been before the ICAEW Investigation Committee. In relation to charge 1, the issue for the Tribunal to decide was whether, as a result of the decision of the ICAEW Investigation Committee and/or the subsequent expulsion of Mr Davis from membership of ICAEW due to the aforementioned non-payment, he had breached rule 2.6.3 of PRPG 2018.
14. The Tribunal considered the factual allegations that gave rise to the ICAEW Investigation Committee decision and noted that it related to failures by Mr Davis over an extended

period to have in place a DPB licence, to carry out compliance and other reviews and to co-operate with ICAEW to address these failures in his practice despite giving assurances to ICAEW that these would be addressed.

15. The Tribunal was of the view that there was no definition of what acts or omissions could amount to bringing discredit on a professional or CIOT or ATT or what would be considered to unbefitting 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 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.
16. The Tribunal concluded that, in relation to particular 1.4 of charge 1, notwithstanding Mr Davis' admissions of the charges, the behaviour of Mr Davis which resulted in the decision of the ICAEW Investigation Committee and with the non-payment of the fine and costs could bring discredit on him, his profession, the CIOT and the ATT because it displayed a failure by Mr Davis to do that which he gave assurances on to ICAEW and thereafter failed to comply with the requirements of a professional regulator in relation to the sanction imposed.
17. As to charge 2, 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 of disciplinary and/or regulatory action upheld against them by another professional body to which a member belongs or by a regulator. The Tribunal considered the annual returns which were before it and noted Mr Davis' admissions. This showed that he did not notify CIOT of the ICAEW Investigation Committee decision within the required 2 months.
18. The Tribunal therefore found that Mr Davis was in breach of the following:
  - a. Rule 2.6.3 of the PRPG 2018 in that Mr Davis, by virtue of the disciplinary and/or regulatory action taken by ICAEW's Investigating Committee and the subsequent expulsion of Mr Davis from the membership of ICAEW due to his non-payment of the fine or costs imposed on him by ICAEW, Mr Davis 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;

- b. Rule 2.14.2 of the PRPG 2018 in that Mr Davis failed to notify the CIOT in writing of the disciplinary action taken by the Investigating Committee of ICAEW within the 2 months as required. The date of the decision of ICAEW was 26 January 2022. In his annual return for the period of 2021, which was submitted on 21 September 2022, Mr Davis made no mention of the ICAEW decision. It was not until Mr Davis submitted his 2022 return on 21 March 2023 that he answered the question, 'Have you ever been the subject of disciplinary action by a professional body, employer or regulatory authority?', with 'Reprimand ICAEW'.

### **Sanction**

19. Having found the charges proved in relation to Mr Davis, the Tribunal decided, in accordance with regulation 20.6 of the Regulations, what action, if any, it should take.
20. 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.
21. 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.
22. 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.
23. The Tribunal considered the aggravating and mitigating factors in making its decision. The Tribunal was informed that there have been no other proceedings brought by the TDB against Mr Davis.

24. The Tribunal was of the view that the aggravating features of this case were the findings made by the ICAEW Investigation Committee, the expulsion of Mr Davis from ICAEW membership and that Mr Davis had (to use his words) ‘buried his head in the sand’.
25. The Tribunal heard mitigation from Mr Davis and observed that he was upset and remorseful. The Tribunal further noted the impact of losing his father had on Mr Davis and this added to the stress that he felt during the public health emergency. The Tribunal noted that Mr Davis openly accepted that he had been deficient in the administration of his practice but that he had reduced the risk of repetition by improving procedures, computer systems and recruiting qualified and experienced staff. The Tribunal noted that upon receiving some inheritance monies, Mr Davis paid his fine and costs to ICAEW.
26. The Tribunal noted that Mr Davis said in submissions that he reported the matter involving ICAEW in his 2022 annual return only after he was prompted to do so by a CIOT employee during a conversation about another matter. However, Mr Davis told the Tribunal that since then he had taken time to familiarise himself with the regulatory framework so as to avoid a recurrence of any failure to report a notifiable matter to CIOT within the prescribed time.
27. 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 charges. 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.
28. Turning to the Guidance, the Tribunal was of the view that the applicable guideline in respect of Charge 1 was ‘(9) Professional Behaviour’. The Tribunal noted that the guideline sanction was censure. The Tribunal considered the aggravating and mitigating features in the Guidance at page 23. The Tribunal was of the view that the failings that gave rise to the ICAEW Investigation Committee were serious and this was compounded by the subsequent failure of Mr Davis to pay the fine and costs leading to him being expelled. However, the Tribunal noted his remorse, the actions that he has taken to avoid a repetition, the eventual payment of the fine and costs, his personal circumstances and his admissions. The Tribunal concluded that there were no compelling reasons for it to depart from the starting point of censure.

29. In relation to Charge 2, the Tribunal was of the view that the applicable guideline in respect of Charge 2 was '(8) Other Breaches of Bye-Laws or Regulations'. The Tribunal was of the view that the nature of the conduct was 'Failure to inform ATT or CIOT of disciplinary and/or regulatory action upheld against them by another professional or regulatory body'. The Tribunal noted that in regard to this conduct, the guideline sanction was censure. The Tribunal noted that the seriousness of the conduct was aggravated by the length of time taken by Mr Davis to notify the CIOT. However, the Tribunal considered the steps that Mr Davis has taken to familiarise himself with the regulatory framework to avoid a repetition. The Tribunal concluded that there were no compelling reasons for it to depart from the starting point of censure.
30. Further, the Tribunal considered the general guidance as to the suitability of censure as set out in the Guidance. The Tribunal was of the view that the conduct complained of in charges 1 and 2 was of a serious nature but that Mr Davis had taken steps to reduce the risk to the public. The Tribunal concluded that in relation to both charges, there was no loss to a client, Mr Davis had acknowledged his failings, the misconduct was isolated, Mr Davis has demonstrated insight and regret into his actions, there was no history of complaints against Mr Davis by CIOT and no repetition of misconduct since. The Tribunal was of the view that censure was a suitable and proportionate sanction.
31. Taking account of all the circumstances, the Tribunal determined that the appropriate and proportionate sanction was one of censure which applies in total to both charges.

### **Costs**

32. 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 principle that the majority of professional members should not subsidise the minority who, through their own failing, have brought upon themselves in disciplinary proceedings.
33. 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 noted that Mr

Davis did not object to the principle and quantum of costs. Mr Davis did not make representations regarding his ability to pay the costs claimed by the TDB or request time to pay beyond the 28 days stipulated by regulation 27.1 of Regulations.

34. Accordingly, the Tribunal ordered that the costs in the sum of £3,443.00 to be paid by Mr Davis.

### **Publication**

35. 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.
36. 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.
37. 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 did not find any circumstances that would justify an order for no publicity.
38. 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.
39. 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 26 January 2022 the Investigation Committee (“IC”) of the Institute of the Chartered Accountants in England and Wales (‘ICAEW’), with the agreement of the Defendant made an order that:

- i. The Defendant be severely reprimanded.
- ii. The Defendant be fined £9,000.
- iii. The Defendant pay costs of £4,315.

1.2 The IC of the ICAEW made the order referred to in Charge 1.1 with respect to complaints that:

- i. The Defendant was advised on 22<sup>nd</sup> November 2018 that “A” was ineligible to hold a DPB licence under regulation 2.03b of the DPB (Investment Business) Handbook because ‘B’ Limited did not hold DPB affiliate status and failed to cooperate with ICAEW to correct this.
- ii. The Defendant, following a QAD Visit in July 2010 confirmed by email on the 28 October 2010 that he would carry out an annual DPB compliance review, however at the QAD’s subsequent visit on 31 July 2018 it was found that this assurance had not been complied with; and/or
- iii. Following a QAD visit in July 2010 the Defendant failed to rectify a breach of regulation 4.04 of the DPB (Investment Business) Handbook which was noted again at the QAD’s visit on the 31 July 2018.
- iv. The Defendant, following a QAD visit in July 2010, confirmed by email on the 28 October 2010 that an Annual Client Money Review would be carried out, however, at the QAD’s subsequent visit on the 31 July 2018 it was found that this assurance had not been complied with.

- v. Between the 10 October and 18 June 2021 the Defendant did not respond to the PAC closing record sent to him on the 31 July 2018 in breach of Practice Assurance Regulation 15 effective from 1 January 2008 and from 1 July 2019.
- 1.3 Due to not paying the fine or costs as referred to in Charge 1.1 the Defendant was expelled from the ICAEW.
  - 1.4 By virtue of the disciplinary and/or regulatory action by ICAEW's Investing Committee in relation to the Defendant referred to in Charges 1.1 and/or 1.2 and/or 1.3 above, the Defendant has conducted himself in an unbecoming manner which tends to bring discredit upon himself and/or harm the standing of the profession and/or the CIOT contrary to rule 2.6.3 of PRPG.

## **Charge 2**

- 2.1 In his 2021 Annual Return, submitted to CIOT on 22 September 2022, the Defendant did not notify the CIOT of the order made against him as referred to in Charge 1.1.
- 2.2 The Defendant failed to notify the Head of Professional Standards at CIOT within 2 months of 26 January 2022 of the regulatory action referred to in Charge 1.1 having been upheld against him by another professional body, namely the ICAEW, to which he belonged contrary to rule 2.14.2.

## APPENDIX 2

### 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 offences<sup>1</sup>.
- 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.