

HEARING ON 31 August 2023

B E T W E E N

TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR KELVIN KALIWOH
(CIOT membership No. 264023)

DECISION AND REASONS

Present:

Tanveer Rakhim (Chair, Lay member)

Mac McCulley (Lay member)

Michael Kaltz (Tax Panel member)

Nigel Bremner (Clerk to the TDB)

The Committee met via Microsoft Teams

INTRODUCTION

1. The Disciplinary Tribunal (‘the Tribunal’) sat on 31 August 2023 to hear charges brought by the Taxation Disciplinary Board (‘TDB’) against Mr Kaliwoh. The hearing was conducted remotely by video conferencing.
2. Mr Kaliwoh did not attend but had provided written representations. The TDB Case Presenter was Ms Aleksandra Manning Rees.
3. Mr Kaliwoh faced two charges, as set out at Appendix 1.

4. As Mr Kaliwoh had admitted the charges against him in writing, the matter was heard pursuant to the simplified procedure in regulation 15 of the Taxation Disciplinary Scheme Regulations 2014 ('Regulations').
5. The Tribunal was provided with the following documents:
 - a. Document index and schedule;
 - b. The papers that were placed before the TDB's Investigatory Committee, which included
 - case summary, complaint from CIOT, Mr Kaliwoh's details, initial letter to Mr Kaliwoh, his response, and complaint response;
 - Certificate of conviction (15 November 2021)
 - c. Mr Kaliwoh's Response Form;
 - d. Correspondence between TDB and Mr Kaliwoh;
 - e. Written Representations from Mr Kaliwoh;
 - f. Screenshots of financial information for Mr Kaliwoh.

BACKGROUND TO THE CHARGES

6. Mr Kaliwoh is a Tax Pathway student who registered as a student with CIOT in July 2020.
7. On 19 April 2021, Mr Kaliwoh was driving a vehicle whilst over the prescribed alcohol limit.
8. On 1 November 2021, Mr Kaliwoh self-referred to the CIOT stating he had just become aware of the reporting obligations. He also explained that he had been out, drank more than he intended and had wrongly assumed he was sober enough to drive. He apologised for the embarrassment caused to the profession and outlined his desire to proceed with his AAT studies.
9. On 15 November 2021, the matter went before South London Magistrates' Court. Mr Kaliwoh had previously pleaded not guilty, but pleaded guilty at or before the

Magistrate Court hearing. He was disqualified from driving for a period of 22 months, to be reduced by 22 weeks if an appropriate course was completed. He was also fined £467, ordered to pay a £47 victim surcharge and the prosecution costs.

10. On the same day, namely 15 November 2021, Mr Kaliwoh updated CIOT of his conviction. CIOT referred Mr Kaliwoh to the TDB on 16 November 2022.
11. TDB initially wrote to Mr Kaliwoh on 7 March 2023 requesting a response to the concerns raised. Mr Kaliwoh replied on 29 March 2020 and accepted his breach of the relevant standards contained in the PRPG 2018. He also took full responsibility and emphasised his deep regret for any discredit brought towards the CIOT as a result of his actions.
12. On 9 May 2023, CIOT considered the response from Mr Kaliwoh. CIOT informed the TDB that they had no comments to make.

PRELIMINARY ISSUES

Service

13. The Tribunal first considered whether service had been validly affected.
14. The Tribunal considered the allegations and the evidence before it. Mr Kaliwoh was emailed and written to on 26 July 2023 informing him of the date and time of this hearing. He was informed that the meeting would be conducted via Microsoft Teams. On 28 July 2023 he was provided with the relevant bundle of papers.
15. The Tribunal was satisfied that Regulations 14.2 and 31.3 of the Regulations had been complied with insofar as complaint materials had been served more than 28 days prior to the fixed date of the hearing on Mr Kaliwoh.

Proceeding in Absence

16. The Tribunal had regard to Regulations 17.3 and 17.4, as well as the factors set out in the case of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162
17. Mr Kaliwoh did acknowledge the emails sent to him on 31 July 2023. He confirmed he was content for the hearing to proceed in his absence. He also confirmed this in his Response Form dated 11 August 2023. Mr Kaliwoh emailed his Written Representations to the TDB on 21 August 2023.
18. Neither party had sought an adjournment. The Tribunal considered that if the case was adjourned then there was no reason to think that Mr Kaliwoh would attend at a subsequent hearing. Mr Kaliwoh was aware of the hearing and voluntarily absented himself. The Tribunal had available to it the supplemental bundle which included Mr Kaliwoh's Written Representations. The Tribunal reminded itself that it was only in exceptional cases that proceedings would be conducted in the absence of the member. This was such a case and the Tribunal determined the case should proceed in Mr Kaliwoh's absence.

DECISION ON THE CHARGES

The relevant paragraphs from the Professional Rules and Practice Guidelines 2018 {'PRPG'} are included at Appendix 2.

Charge 1

19. The Tribunal had regard to Regulation 30.5 (a) whereby a '*conviction of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence*'. The conviction and sentence was proven by virtue of the Certificate of Conviction dated 15 November 2021. This confirmed the outcome at the hearing at South London Magistrates' Court.
20. The Tribunal also noted that Mr Kaliwoh had admitted the charge within his Response Form, as well as within his Written Representations.

21. It therefore found the Charge 1 is proved.

Charge 2

22. This Charge was brought under Rules 2.2.2 and 2.6.3 of the PRPG. Rule 2.2.2 requires a member to not engage in any illegal activity. Rule 2.6.3 required a member not to conduct themselves in an unbecoming manner which tends to bring discredit upon a member and/or may harm the standing of the profession and/or the CIOT. The TDB's case was that by reason of his conviction, Mr Kaliwoh had conducted himself in a manner unbecoming a member.

23. The Tribunal noted that Mr Kaliwoh had admitted the charge with respect to breaches of both rules within his Response Form.

24. The Tribunal was satisfied that Mr Kaliwoh had made a clear and unequivocal admission to the charge and this was appropriate in light of the evidence before the Tribunal. It therefore found that Charge 2 is proved on the basis of Mr Kaliwoh's admissions.

SANCTION

25. In determining what, if any, sanction to impose, the Tribunal had regard to the Indicative Sanctions Guidance ('ISG').

26. 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.

27. 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.

28. The Tribunal took into account the admissions and Mr Kaliwoh's lack of any previous disciplinary matters before this regulator.
29. Ms Manning Rees submitted that an aggravating factor was that Mr Kaliwoh had been 2.5 times over the legal limit. However, she submitted that there had been an early admission, Mr Kaliwoh had engaged throughout and there were no known previous regulatory matters. She left it for the Tribunal to determine the appropriate sanction.
30. Mr Kaliwoh, in his Written Representations, apologised and submitted that he understood the two fundamental principles that he had breached. He submitted it was an isolated incident where he had underestimated the amount of alcohol consumed and now appreciated that prior to driving no alcohol should be consumed at all. He submitted that he had reported this upon becoming aware of the need to report and that he had actively cooperated with the TDB. He submitted that the conduct would not be repeated and reminded the Tribunal of his prior good history as a student on the Tax Pathway as well as within his workplace. He also reminded the Tribunal of his desire to become a Chartered Tax Adviser. Mr Kaliwoh accepted a sanction is required and submitted that a finding of no sanction would not suffice. He made no representation on the actual sanction sought.
31. The Tribunal took all the above matters into consideration. The Tribunal accepted the Case Presenter's submission that being 2.5 times over the drink drive limit was an aggravating feature of the case. The Tribunal also noted that this was a serious conviction imposed by the criminal courts. However, there were numerous mitigating factors present such as Mr Kaliwoh's early admission (not just with the TDB but also at the Magistrates Court) as well as his prompt and consistent engagement with the regulatory process. It was also noted that the misconduct had occurred in Mr Kaliwoh's private life as opposed to it being within a professional capacity. The Tribunal accepted that Mr Kaliwoh had been a man of good character prior to the index incident.

32. The Tribunal had regard to the guidance in the ISG. This included considering the guidance in the *'Criminal Convictions unrelated to professional work'* section. The Tribunal noted careful consideration was required, the criminal court had imposed its sentence but the breach of the regulatory regulations meant the Tribunal had to deal with the matter.

33. The Tribunal was aware of relevant guidance in the ISG which included:

- a. *The role of the Tribunal is to balance the nature and gravity of the offence and its bearing, if any, on the member's fitness to practise as a tax adviser; and to weigh up the need to protect the public and confidence in the reputation of the profession against the need to impose a further penalty and its consequential impact on the ability of the member to practise their profession.*
- b. *Consideration needs to be given to whether the conduct crossed the line of damaging the standing of the member as a provider of tax services or harmed the profession. A member owes a duty not to act in a way that would bring the CIOT/ATT into disrepute or in a way that would harm the reputation of the CIOT/ATT.*
- c. *Given the range of situations, it is not possible to give simple guidance on the likely sanction(s). The Tribunal should have regard to the full range of sanctions that are available, from No Further Action to Expulsion.*

34. The Tribunal bore in mind its duty to only impose a sanction which was appropriate and proportionate in all the circumstances of the case. It therefore considered the available options from the bottom upwards.

35. The Tribunal considered that imposing no sanction or allowing the matter to rest on file would not appropriately mark the nature of Mr Kaliwoh's misconduct. There had been a criminal conviction and this was a serious matter. The Tribunal did not consider such sanctions would address the aims of upholding the proper standards of conduct in the profession and maintaining its reputation.

36. The Tribunal did not consider a warning was appropriate given this was not minor misconduct. An apology was not appropriate as the misconduct did not affect any clients or members of the public.
37. The Tribunal next considered a Censure and had regard to the relevant part of the ISG. The Tribunal took account of this being a serious condition and the considerable margin over which Mr Kaliwoh had exceeded the drink drive limit. The conviction does diminish the reputation of the profession and the public's confidence in the same. However, the offence and conviction was unrelated to any professional work as it took place in Mr Kaliwoh's private life. Accordingly there was no risk of harm to clients and there was no requirement for a sanction with the aim of protecting the public. The Tribunal noted that Mr Kaliwoh had accepted his shortcomings and had provided some insight, albeit it was qualified. Mr Kaliwoh had shown he understood the impact of his misconduct on the profession and the public. This was an isolated incident with no prior regulatory findings having been made against Mr Kaliwoh.
38. The Tribunal thus concluded that a Censure was the appropriate sanction. With respect of the period of the Censure, the Tribunal considered the standard period of three years was appropriate and there were no reason to depart from this.
39. The Tribunal also considered if a fine would be appropriate. It noted that the criminal courts had already imposed a £487 fine and the Tribunal was mindful that its role was not to punish. The Tribunal considered a financial penalty would be punitive and it did not consider a fine would suit any appropriate purpose. The Tribunal determined that the sanction of the Censure would serve as an appropriate deterrent to members of the profession and mark the misconduct.
40. The Tribunal did not consider a suspension was appropriate as it was disproportionate. Mr Kaliwoh was already working through his criminal sentence of a 22 month ban imposed in November 2021.

COSTS:

41. The TDB applied for costs in the sum of £2,832. Mr Kaliwoh relied upon screenshots of his financial information showing incomings and outgoings. In his written submissions, he requested payment of the TDB's costs *'in monthly instalments starting from the end of September, at an amount of £200 per month.'* He also submitted that as his credit card balance reduced then he would contribute more in some months.
42. The Tribunal had regard to the Guidance on Awarding Costs. The presumption is that the 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. The Tribunal found no reason to depart from that presumption. The Tribunal noted the financial information from Mr Kaliwoh. There was no reason that the costs incurred by the TDB should be reduced as they were rightly incurred. The Tribunal considered the breakdown of the costs claimed in the schedule and was satisfied that those costs were reasonable and had been appropriately incurred.
43. The Tribunal noted Mr Kaliwoh's financial means and determined the costs should be paid at a rate of £200 per month, to commence from the end of October 2023.

PUBLICITY:

44. 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 member.
45. The Guidance on the Publication of Disciplinary and Appeal Decisions sets out the general principle that a disciplinary finding made against a member will be published and the member named in the publication. The Tribunal found no reason to depart from that principle and directed that this decision be published in accordance with the Guidance.
46. Pursuant to regulation 28.4 of the Disciplinary Regulations, publication will be made after the expiry of the appeal period, namely within 21 days of the effective date of this order, provided no valid notice of appeal is served within that period.

EFFECTIVE DATE

47. Pursuant to regulation 20.9, this decision will be treated as effective from the date on which it is deemed served on Mr Kaliwoh.

A handwritten signature in black ink, appearing to read 'TR', with a long horizontal flourish extending to the right.

Tanveer Rakhim
(Chair)
20 September 2023

APPENDIX 1

IN THE DISCIPLINARY TRIBUNAL OF
THE TAXATION DISCIPLINARY BOARD

(TDB/2021/28)

HEARING ON 31 August 2023

B E T W E E N

TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR KELVIN KALIWOH
(CIOT membership No. 264023)

SCHEDULE OF CHARGES

The charges set out below refer to the following rules of the Professional Rules and Practice Guidelines 2018 of the Chartered Institute of Taxation (the “CIOT”) and the Association of Taxation Technicians (the “ATT”) (the “PRPG”), as amended from 1 January 2021:

- 2.2.2 (integrity)
- 2.6.3 (professional behaviour)

Charge 1 -

1.1. On 15 November 2021, Mr Kaliwoh was convicted at Croydon Magistrates Court for the following offence:

On 19/04/2021 at London Road, Thornton Heath, Croydon drove a motor vehicle, namely a Mercedes A180, registration LY66 AUF on a road, namely London Road, Thornton Heath, Croydon, after consuming so much alcohol that the proportion of it in your breath, namely 87 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit. TRAFFIC OFFENDERS ACT 1988. 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 conviction set out at 1.1 Mr Kaliwoh received a sentence of disqualification from holding or obtaining a driving licence for 22 months and a fine of £487. Mr Kaliwoh was ordered to pay £320 prosecution costs and £47 victim surcharge.

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 behavior, contrary to rule 2.2.2 of the PRPG; and/or

2.2 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 CIOT, contrary to rule 2.6.3 of the PRPG.

END OF CHARGES

APPENDIX 2

RULE 2.2.2 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018

2.2 Integrity

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

RULE 2.6.3 OF THE PROFESSIONAL RULES AND PRACTICE GUIDELINES 2018

2.6 Professional Behaviour

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 unbefitting, 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).*

PROFESSIONAL COMPETENCE AND DUE CARE

This is defined within the PRPG 2011 at paragraph 2.1 in the following terms:

To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation, techniques and act diligently and in accordance with applicable technical and professional standards.