

HEARING ON 16 April 2024

B E T W E E N

TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR ADAM HART
(CIOT membership No. 176785)

DECISION AND REASONS

Present:

Tanveer Rakhim (Chair, Lay member)

Amran Hussein (Lay member)

Shashi Sharma (Tax Panel member)

Nigel Bremner (Clerk to the TDB)

The Committee met via Microsoft Teams

INTRODUCTION

1. The Disciplinary Tribunal (‘the Tribunal’) sat on 16 April 2024 to hear charges brought by the Taxation Disciplinary Board (‘TDB’) against Mr Hart. The hearing was conducted remotely by video conferencing.
2. Mr Hart attended and was represented by Ms Sarah Wood, counsel. The TDB Case Presenter was Ms Sophia Kerridge, counsel.
3. Mr Hart faced the charge, as set out at Appendix 1. This reflects the charge after the amendment was granted (see below).

4. As Mr Hart had admitted the charges against him in writing on 8 April 2024, and as this was confirmed at the hearing too, the matter was heard pursuant to the simplified procedure in regulation 15 of the Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016 and January 2024) ('Regulations').
5. The Tribunal was provided with the following documents:
 - a. Document index and schedule;
 - b. Case Summary and papers before the Investigation Committee:
 - Case summary
 - Complaint form/referral (13 November 2023)
 - Initial letter to member (13 December 2023)
 - Supporting documents – certificate of conviction/Thai version and English translation (30 October 2023)
 - Member response (24 January 2024)
 - Other correspondence with member
 - c. Letter to Member re. IC decision;
 - d. Confirmation of receipt of documents by Member;
 - e. Email from DAC Beachcroft;
 - f. Member's documents :
 - Response form (4 April 2024)
 - Written submission from counsel (8 April 2024)
 - Mitigation statement of Member (8 April 2024)
 - Certified translation of Thai judgment into English (10 January 2024)
 - Expenses schedule
 - Testimonials x3 (April 2024)
 - g. Email from TDB to DAC Beachcroft with draft costs schedule.

BACKGROUND TO THE CHARGES

6. Mr Hart is registered with the CIOT.

7. Mr Hart lives in Guernsey and is employed by Deloitte LLP as a Director in tax. His work focuses on tax compliance in the funds sector. He has been employed by Deloitte LLP in Guernsey since June 2004.
8. On the evening of 26 April 2023, whilst on holiday in Thailand, Mr Hart was with his family and driving an unregistered pickup truck. He drove into a junction and failed to stop at a red traffic light. He collided with a motorcycle, which was correctly established on the road. The motorcyclist was not wearing a helmet and died some 5 to 6 hours later from a head injury.
9. Section 291 of the Thai Criminal Code states that where a person causes the death of another through negligence then the maximum sentence available to the Court is one of 10 years imprisonment and a fine of 20,000 THB.
10. Mr Hart was convicted in Thailand on 27 September 2023 when he pleaded guilty to one offence contrary to Section 43(4) of the Road Traffic Act 1979 of driving negligently in such a way that might cause injury to any person or property. His guilty plea was taken into consideration by the sentencing judge and his sentence was halved to 18 months in prison and a fine of 15,000 THB was imposed. Following further review, the judge saw it fit to suspend the sentence for 2 years.
11. Mr Hart remained in Thailand until 5 October 2023, staying on post-accident to assist with Police enquiries and to finalise the criminal proceedings.
12. Mr Hart reported the event to his employer on the day after the accident. He had also reported this to the ICAEW at some unknown date. The CIOT referred this on to the TDB on 17 November 2023.
13. Mr Hart self-reported his conviction to the TDB on 13 November 2023. Within the self-report, he stated that he had grounds to defend the matter as his view of the red light was mostly blocked by a temporary electoral advertising sign and a tree, but he pleaded guilty on the legal advice given, as he was told it would be simpler and quicker. He stated Thailand has the second most dangerous roads in the world according to the World Health Organisation . He was told by his lawyer and the police

that fatal accidents happen regularly at that junction, thus the accident was not a high profile event in Thailand. He stated that at no stage had he been asked to confirm who his employer was or whether he is a member of any professional bodies. Finally, he expressed his remorse and apologised.

14. The TDB initially wrote to Mr Hart on 13 December 2023 requesting a response to the concerns raised. Mr Hart replied on 18 December 2023 and noted that he was to reply within 30 days of the certificate of conviction and other relevant documents becoming available. The TDB were subsequently provided with the certificate of conviction and its English translation on 17 January 2024. At the same time, Mr Hart set out his position, and this was similar to what he explained in his original self referral.
15. On 5 April 2024, Mr Hart's solicitors contacted the TDB and provided a Response Form where the breaches of the PRPG were accepted and it was submitted that a substantive hearing on facts was not required. His Response Form dated 8 April 2024 stated that an oral hearing was not required.

PRELIMINARY ISSUES

Application to amend charge

16. Ms Wood applied to amend the Schedule of Charges to remove the words '*after midnight*' from Paragraph 1.1 of Charge 1:

'1.1 On 22 August 2023 at Khon Kaen Provincial Court in Thailand, the Defendant was convicted following a Guilty plea, of the following offence:

Negligence causing the death of another person, contrary to Thai Criminal Code, Section 291, Road Traffic Act 1979, Section 43(4), 157 when the Defendant, ~~after midnight~~ on 26 April 2023, drove a white pickup truck (Vehicle No. MP1TFR87JPG043557) and failed to stop for a red light, driving into Khao Suan Kwang junction where he collided with the motorcycle driven by Mr Ratthasak Ngamchat, causing Mr Ratthasak Ngamchat to suffer a fatal head injury.'

17. Ms Wood relied upon the updated translation of the Certified translation of Thai judgment into English, dated 10 January 2024. She submitted that these words do not

appear in the translation and should thus be struck out. Ms Kerridge was in agreement.

18. The Tribunal noted Regulation 17.6 stated that; *'No objection shall be upheld due to any technical fault in the Charge or in the service of notice or documents on the Defendant or in the procedure of the Disciplinary Tribunal, provided that the Defendant is not unreasonably prejudiced thereby.'* The Panel noted the earlier translation, which indicated the time, was not as accurate as the translation dated 10 January 2024 where the time was not mentioned. The application was made at the outset of the hearing, the parties were in agreement with the amendment and no unfairness was caused as it was a minor amendment as opposed to a substantive change. The Tribunal allowed the amendment as it would allow the charge to be more accurately put to Mr Hart.

19. Paragraph 1.1 of Charge 1, as amended, now read as follows:

'1.1 On 22 August 2023 at Khon Kaen Provincial Court in Thailand, the Defendant was convicted following a Guilty plea, of the following offence:

Negligence causing the death of another person, contrary to Thai Criminal Code, Section 291, Road Traffic Act 1979, Section 43(4), 157 when the Defendant, on 26 April 2023, drove a white pickup truck (Vehicle No. MP1TFR87JPG043557) and failed to stop for a red light, driving into Khao Suan Kwang junction where he collided with the motorcycle driven by Mr Ratthasak Ngamchat, causing Mr Ratthasak Ngamchat to suffer a fatal head injury.'

DECISION ON THE CHARGES

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

Charge 1

20. 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 17 November 2023. This confirmed the outcome at the hearing at Khon Kaen Provincial Court.

21. The Tribunal also noted that Mr Hart had admitted to paragraphs 1.1 and 1.2 of Charge 1 within his Response Form, as well as within his written representations.
22. Paragraph 1.3 of Charge 1 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 Hart had conducted himself in a manner unbecoming a member.
23. The Tribunal noted that Mr Hart had admitted the charge with respect to breaches of both rules within his Response Form. At the hearing, via his counsel, he admitted Paragraphs 1.3 (a) and (b) of Charge 1.
24. The Tribunal was satisfied that Mr Hart 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 1 was proved on the basis of Mr Hart'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 Hart's lack of any previous disciplinary matters before this regulator.
29. Mr Hart gave evidence at the hearing. He explained that his initial response to the TDB was rushed, he was without legal advice due to his financial struggles, he tried to deal with the matter himself and in this initial contact he was seeking guidance from the TDB. He accepted the breaches and confirmed that other than London, he was not planning to work abroad. With respect to the event in question, he stated he had visited the family next day and paid for the funeral as he believed that was the right thing to do.
30. Ms Kerridge submitted that an aggravating factor was that the conviction was a serious event, which was akin to causing death by careless driving. She submitted the Defendant's initial response to the TDB may be interpreted as reflecting an attempt to minimise the offence, but she accepted that he did not appear to be familiar with the process and terminology, as his later mitigation statement showed. As for mitigating factors, she accepted that the Defendant had pleaded guilty at the first opportunity, there was clear remorse, he had self reported to the regulator, he had cooperated with the proceedings, there had been no impact upon his professional work and no clients were affected. She also submitted that there was no previous criminal or disciplinary history. She indicated a Censure may be an appropriate sanction, any lesser sanction would not reflect the seriousness of the offence, and a more serious sanction may not be required given the mitigation.
31. Ms Wood relied upon her written submissions within the bundle. Ms Wood also submitted that it was an isolated incident, this was not deemed to be dangerous driving and there was no alcohol or speeding involved. She reminded the Tribunal of the remorse and regret within the mitigation statement. She further submitted that it

was an isolated event, there had been no repetition since and the risk of repetition was low. She submitted that the Defendant had stayed on in Thailand voluntarily to assist in the investigations being completed, he paid the fine despite it not being obligatory, he had visited the family, paid for the funeral and was in the process of agreeing the civil compensation.

32. Ms Wood submitted that a Censure was the appropriate sanction. She referred the Tribunal to the positive references attesting to the Defendant's good character. She submitted that there was no risk to the public, the incident was far removed from the Defendant's professional role and that an informed member of the public would appreciate that the Defendant's ability to do his work was unaffected.

33. The Tribunal took all the above matters into consideration. The Tribunal considered that this was a serious conviction imposed by the criminal courts. However, the Tribunal accepted this was an isolated incident with no repetition since and was satisfied that the risk of repetition was low. The incident was in Mr Hart's private life, no client had been affected and there was no risk to the public.

34. The Tribunal placed little weight on the initial response from the Defendant where he was without representation. The initial response was a forensic analysis of the breaches put to him by the TDB and as to why they were incorrect. The Tribunal accepted the Defendant's work with his lawyers increased his familiarity with the process and terminology. His verbal testimony was that he may not have been in the right headspace at the time (*"I wasn't thinking", "I was seeking guidance", "didn't take legal advice at the time... I would have accepted the IC decision"*)

35. The Tribunal considered the later mitigation statement was more detailed and a fairer summary. The Tribunal was persuaded of the large amount of mitigation present. Mr Hart pleaded guilty at an early stage, he took ownership and conducted himself in an admirable manner in the aftermath of the unfortunate event. He had cooperated with the court and the regulatory process. The Tribunal was satisfied that Mr Hart had

displayed genuine remorse, regret and insight. His conduct from the outset reflects this, in that he attended the hospital, arranged the funeral and was engaging in a civil settlement. The Tribunal accepted that Mr Hart had been a man of good character prior to the index incident.

36. The Tribunal accepted Ms Wood's submission that an informed member of the public would appreciate that Mr Hart's ability to do his work is unaffected.

37. The Tribunal had regard to the guidance in the Indicative Sanction Guidance ('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.

38. 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.*

39. 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.
40. The Tribunal considered that imposing no sanction or allowing the matter to rest on file would not appropriately mark the nature of Mr Hart'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.
41. 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.
42. 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 conviction and that the conviction does diminish the reputation of the profession and the public's confidence in the same. However, the offence and conviction were unrelated to any professional work as they took place in Mr Hart'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 Hart had evidenced his insight. Mr Hart 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 Hart.
43. 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.
44. The Tribunal also considered if a fine would be appropriate. It noted that the criminal courts had already imposed a 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.

45. The Tribunal did not consider a suspension was appropriate as it was disproportionate. Mr Hart was already under an ongoing suspended sentence.

COSTS:

46. The TDB applied for costs in the sum of £2,493.

47. Mr Hart provided a spreadsheet of his monthly expenses, which the Tribunal took into account. The Tribunal also took into account the details of the financial position provided in Mr Hart's mitigation statement and the clarification provided at the hearing.

48. 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 Hart. It also noted the sums that were available to him in the form of shares and savings.

49. There was no reason that the costs incurred by the TDB should be reduced as they were rightly incurred. The Tribunal did not accept that the costs should be reduced due to the pending civil compensation. The Tribunal noted that Mr Hart intended to pay any agreed compensation and had little doubt he would also endeavour to honour any costs awarded. The admission was only received by the TDB the week prior to the hearing. The hearing was still required to assist the Tribunal with the sanction; Mr Hart's evidence and his counsel's submission were vital in persuading the Tribunal of the sanction arrived at above. There were no exceptional circumstances that would persuade the Tribunal that costs were not to be awarded. 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. There was no reason why the costs should be reduced. The Tribunal awarded the costs in the sum claimed, at £2,493.

50. The Tribunal were agreeable in allowing Mr Hart to pay the costs, over four equal instalments, with the full amount of £2,493 due within 12 months.

PUBLICITY:

51. The Tribunal made an order under regulation 28.1 of the Disciplinary Regulations for publication of its decision and the written reasons, naming the member.

52. 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. Both advocates agreed that publication was appropriate. The Tribunal found no reason to depart from that principle and directed that this decision be published in accordance with the Guidance.

53. 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

54. Pursuant to regulation 20.10, this decision will be treated as effective from the date on which it is deemed served on Mr Hart.

T Rakhim

**Tanveer Rakhim
(Chair)
16 April 2024**

APPENDIX 1

IN THE DISCIPLINARY TRIBUNAL OF
THE TAXATION DISCIPLINARY BOARD

TDB/2023/86

HEARING ON 16 April 2024

B E T W E E N

TAXATION DISCIPLINARY BOARD (“TDB”)

– and –

MR ADAM HART
(CIOT membership No. 176785)

SCHEDULE OF CHARGES

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

2.2.2 (Integrity)

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

2.6.3 (Professional Behaviour)

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 member’s personal or private life.

Charge 1

1.1 On 22 August 2023 at Khon Kaen Provincial Court in Thailand, the Defendant was convicted following a Guilty plea, of the following offence:

Negligence causing the death of another person, contrary to Thai Criminal Code, Section 291, Road Traffic Act 1979, Section 43(4), 157 when the Defendant, on 26 April 2023, drove a white pickup truck (Vehicle No. MP1TFR87JPG043557) and failed to stop for a red light, driving into Khao Suan Kwang junction where he collided with

the motorcycle driven by Mr Ratthasak Ngamchat, causing Mr Ratthasak Ngamchat to suffer a fatal head injury.

1.2 As a result of the conviction set out at 1.1, the Defendant was sentenced on 27 September 2023 to 1 year 6 months' imprisonment suspended for 2 years.

1.3 Consequent upon the facts and matters set out in 1.1 and 1.2 above the Defendant is in breach of:

a. Rule 2.2.2 of the PRPG in that the Defendant engaged in or was party to illegal activity;

b. Rule 2.6.3 of the PRPG in that the Defendant 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.

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 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).*