

**THE TAXATION DISCIPLINARY BOARD**

**TDB**

**-and-**

**Ms. KUN TIAN  
(ATT STUDENT 276)**

**Defendant**

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**DECISION AND REASONS**

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<b>Date of Hearing</b>	11 July 2024
<b>Venue</b>	Virtual using Microsoft Teams
<b>Tribunal Members</b>	
Legally Qualified Chair	Brett Wilson
Professional Member	Martin Brown
Lay Member	Michael McCulley
<b>Tribunal Clerk</b>	Nigel Bremner
<b>Taxation Disciplinary Board (‘TBD’)</b>	Represented by Ms Sophia Kerridge of counsel
<b>Ms Tian</b>	Not in attendance

**Background**

1. The TDB's case is that Ms Tian, a student member of the Association of Taxation Technicians, colluded with another student whilst they were sitting ATT examinations between 2 and 4 May 2023.
2. The TDB alleged that Ms Tian knew or ought to have known that it was against the rules of the examination to communicate or obtain assistance from another student and that her answers to the exam questions had to be her own.

### **Preliminary Issues**

3. Ms Tian did not attend the hearing and the TDB applied for the Tribunal to proceed in Ms Tian's absence. The Tribunal had regard to rules 17.3 and 17.4 of The Taxation Disciplinary Scheme Regulations 2014 (as amended November 2016 and January 2024) (the 'Regulations') which allowed the Tribunal to proceed in the absence of a defendant. The Tribunal was satisfied that that the aforementioned version of the Regulations applied as the Regulations state that they take effect from 1 January 2024 and that the version to be used is that which is effective on the date of the decision to refer the Charge to the Disciplinary Tribunal. The Tribunal noted that the Investigation Committee decision which referred the matter to the Disciplinary Tribunal was made on 26 January 2024 and Ms Tian was notified, by way of letter dated 26 March 2024, and that as she had not responded to the proposal to deal with the matter by of consent order, the matter would be referred to a Disciplinary Tribunal.
4. In deciding whether to proceed in the absence of a defendant, the Tribunal had to be satisfied that Ms Tian had been served with the bundle no later than 35 days before the hearing, pursuant to rule 14.1 of the Regulations so that she had been given reasonable notice of the hearing and a reasonable opportunity to prepare her case.
5. The Tribunal also had to act reasonably and, in making its decision, the Tribunal had regard to the guidance provided in the criminal courts when deciding whether to proceed in the absence of an accused. The Tribunal therefore considered decided cases such as *Hayward* [2001] EWCA Crim 168 and *Jones (Anthony William)* [2002] UKHL 5. In particular, the Tribunal considered the following matters:
  - a. the likelihood of Ms Tian attending a future hearing if the Tribunal decided to adjourn;
  - b. the prejudice that could be caused to the TDB if the hearing was adjourned;

- c. the impact that an adjournment could have on the ability of the TDB to protect the public;
  - d. Ms Tian had not responded to the TDB's letters and so had not provided any explanation for not attending nor had she requested an adjournment;
6. As to service, the Tribunal considered the several letters that had been sent to Ms Tian by the TDB since 13 December 2023. The Tribunal noted that on 28 May 2024, the TDB sent an email to Ms Tian which informed her of the date and time of the hearing and that it was taking place remotely using Teams. The email also attached a number of documents which included the bundle, the PRPG 2018 (as amended in 2021 and hereinafter referred to as the 'PRPG'), the TDB Scheme, and guidance. This provided Ms Tian with at least 35 days (as required by rule 14.1 of the Regulations) notice of the hearing and provided her with the items listed in sub-paragraphs (a) to (f) of rule 14.1.
  7. Further, the Tribunal noted that, on 9 July 2024, the clerk to the Tribunal sent Ms Tian an email which contained a link to the hearing, it reminded her of the start time, that she had yet to provide a Response Form and warned her of the possibility of the Tribunal proceeding in her absence.
  8. The Tribunal was satisfied that Ms Tian had been served in accordance with rules 31.1 and 31.3 of the Regulations and that she had been given a reasonable opportunity to prepare her case. The Tribunal was satisfied that there was nothing to suggest that Ms Tian would attend a future hearing and an adjournment could undermine the ability of the TDB to carry out its functions of protecting the public. The Tribunal therefore decided to proceed in the absence of Ms Tian.

## **Evidence**

9. The Tribunal did not hear oral evidence. It was provided with a bundle of documentary evidence. The Tribunal was entitled to consider hearsay evidence and attach such weight to that evidence as it considered appropriate.
10. The bundle included correspondence between ATT and Ms Tian, Ms Tian's completed exam papers which had been manually annotated to identify the similarities between her response and those of another student which the ATT alleged were due to Ms Tian's collusion with that student, the results of the anti-plagiarism software, screenshots which the ATT argued demonstrated that Ms Tian had received assistance from another student.

11. The Tribunal considered the email that Ms Tian wrote to the ATT dated 31 May 2023. In that letter, Ms Tian accepted that there was a 'high similarity' in her exam answers and those of another student. She explained that this could be due to them preparing together and communication with the other student on a few short form questions during the exam. She stated that she completed the exam whilst alone and completed the majority of it by herself. She stated that she accepted that her behaviour was inappropriate and violated the integrity of the exams. She explained that when taking the exam, she was unwell and fearful of losing her job. She stated that her actions were a moment of weakness. She apologised and accepted that she should not have breached the exam regulations.
12. The Tribunal noted that it was not disputed that on 2, 3 and 4 May 2023, Ms Tian sat ATT exams. These were taken remotely using a computer at a location of Ms Tian's choice (namely her flat) and that she was alone at the time.
13. The Tribunal considered the screen shots provided by the ATT which showed that whilst Ms Tian was sitting the exam, she was recorded using the camera on the device that she was using. The annotations on the screenshots state that the screenshots show that during the exam Ms Tian and another student had shared answers to some questions.
14. The Tribunal considered the document entitled, 'Extract from the Association of Taxation Technicians – ATT Examination Steering Group'. This was the minutes of a meeting held to consider Miss Tian's exam conduct. The Tribunal noted that the minutes confirmed that upon receiving Ms Tian's exam paper, the ATT identified similarities between Ms Tian's answers and those of another student.
15. The minutes confirmed that the ATT first identified the collusion by reviewing the footage from which the screenshots were taken. It then completed a comparison of the papers and similarities were identified. That evidence was placed before the Tribunal as an appendix to the ATT's minutes. It showed the similarities marked up in red. The ATT minutes also confirm that the ATT carried out a further analysis using anti-plagiarism software. This concluded that there was some collusion in some, but not all, short-form questions in Papers 2 and 3. The software analysis did not confirm collusion in respect of Paper 1.
16. The Tribunal attached significant weight to the ATT minutes as they attached the primary evidence in the form of the screenshots, the answers of Ms Tian and the other

student, with the annotations, and the outcome of the anti-plagiarism software. This allowed the Tribunal to verify the evidential basis for the conclusions reached by the ATT.

17. The Tribunal also attached significant weight to Ms Tian's response to the ATT. The Tribunal considered that to be an acceptance by her that she had colluded with another student during the exam and that she was aware that this was prohibited. For the avoidance of doubt, the Tribunal had regard to a letter from the ATT which set out the warning notice that they say was given to students which expressly prohibited students from communicating or receiving assistance during the exam. Given that Ms Tian had not responded to the TDB and with regard to her letter to the ATT, the Tribunal concluded that, on the balance of probabilities, Ms Tian was aware of that notice and that she understood it.
18. The Tribunal reminded itself that the burden of proof in these proceedings rests on the TDB and that it was required to prove the facts and, indeed, all elements of the charges to the civil standard which is the balance of probabilities. That means that the Tribunal could find a fact or aspect of the charges proved if the Tribunal was satisfied that the alleged matter was more likely than not to have occurred.
19. Therefore, turning to the charges, the Tribunal was satisfied that, on consideration of the evidence outlined above and noting that there was no response from Ms Tian disputing the TDB's evidence, on the balance of probabilities, Charge 1 was proved. This provided a basic factual matrix on which the Tribunal would consider Charge 2.
20. In relation to Charge 2(a), the Tribunal noted that this alleged dishonesty and a breach of rule 2.2.1 of the PRPG. The Tribunal applied the test for dishonesty as set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67. This required the Tribunal to consider what facts were known to Ms Tian and given her knowledge of those facts, was her behaviour dishonest by reference to the standards of the reasonable man in the street.
21. The Tribunal was of the view that Ms Tian's letter to the ATT confirmed that she was aware of the fact that she must not communicate with another student during the exam and that she must not receive assistance. Therefore, given that an exam is generally designed to test the knowledge of the person sitting it, the reasonable person would consider that a student who colludes with another to obtain answers to some questions and who then presents the completed exam paper as their own, to have cheated and that such behaviour would be dishonest in those circumstances.

22. The Tribunal considered rule 2.2.1 of the PRPG which states that:

“A member must always be honest in all their professional work. In particular, a member must not knowingly or recklessly supply information or make any statement which is false or misleading, nor knowingly fail to provide relevant information”.

23. The Tribunal had found that Ms Tian was aware of the rule against colluding with another whilst sitting the exam but nevertheless did so in relation to some of the exam questions and thereafter submitted her exam paper as her own work. In doing so, the Tribunal concluded that she had supplied information (namely her answers in her completed exam papers) which she knew or ought to have known was misleading or false in that it was not her own work. The Tribunal therefore found that rule 2.2.1 had been breached.

24. The Tribunal considered rule 2.6.2 of the PRPG which states that:

“A member must:

- Uphold the professional standards of the CIOT and ATT as set out in the Laws of the CIOT and ATT;
- Take due care in their professional conduct and professional dealings”

25. The Tribunal considered the definition of ‘the Laws of the CIOT and ATT’ which is set out in the PRPG. The definition provides:

“Laws of the CIOT and ATT means the rules and regulations of both bodies comprising the Royal Charter and Byelaws of the CIOT, the Memorandum and Articles of the ATT, CIOT Council General Regulations and Member’s Regulations and ATT Consolidated Regulations together with Professional Rules and Practice Guidelines, Professional Conduct in Relation to Taxation, PII and CPD Regulations, Money Laundering Regulations Registration, Monitoring and Compliance Scheme, CCAB Anti-Money Laundering Guidance and the Taxation Disciplinary Scheme.(See [www.tax.org.uk](http://www.tax.org.uk) and [www.att.org.uk](http://www.att.org.uk))”

25. The Tribunal noted that the definition includes the PRPG. Therefore, it follows that if there has been a finding that Ms Tian has breached any provision of the PRPG she has failed to uphold the professional standards as set out in the Laws of the CIOT and ATT. Given that the Tribunal has found that Ms Tian has breached rule 2.2.1, it follows that she has breached rule 2.6.2. The Tribunal was also of the view that Ms Tian’s actions

caused her to breach rule 2.6.2 as the exams were part of her professional conduct as the exams related to her professional body, namely the ATT, and her profession.

26. The Tribunal considered rule 2.6.3 of the PRPG which states that:

“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 Page 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.

27. For the reasons set out in relation to rule 2.6.2, the Tribunal found that Ms Tian breached the Laws of the CIOT and ATT and it follows that she breached rule 2.6.3. Further, the Tribunal found that by dishonestly colluding with another student in sitting the exams, Ms Tian acted in a way that could be described as improper and was likely to bring discredit on herself. For the avoidance of doubt, the Tribunal found that as the exams which Ms Tian took were necessary for her work, it was more likely than not that her misconduct formed part of her duties as part of her employment. If the Tribunal was wrong about that, Ms Tian’s conduct would be captured by the third aspect of rule 2.6.3 which covers activities of members both in and outside their professional work.

28. The Tribunal therefore found charge 2 proved.

### **Sanction**

29. In considering sanction, the Tribunal had regard to the TDB’s Indicative Sanction Guidance. The Tribunal reminded itself that the sanctions are not intended to be punitive. The purpose of sanction is protection of the public. The Tribunal had to impose a sanction which was proportionate and it had to adopt an approach whereby it considered

the most lenient sanction first, and only if it was of the view that it did not reflect the seriousness of the misconduct should the Tribunal consider a more severe sanction.

30. The Tribunal was informed that Ms Tian had not been subjected to any previous disciplinary proceedings.

31. The Tribunal noted that Ms Tian was a student and therefore it concluded that she may be of limited financial means which meant that a fine would not be appropriate. Further, the student status of Ms Tian led the Tribunal to conclude that the most appropriate guidance was that set out in part 10 of the Indicative Sanctions Guidance which is reserved for students.

32. The guidance provides two levels of sanction where a student has committed misconduct in relation to exams. The Tribunal considered the less serious sanctions first which states:

“If the Tribunal finds that the student was in possession of unauthorised material during an examination but is satisfied that there was no intention to cheat, then in the absence of other misconduct factors a lesser sanction would normally be appropriate”

33. The recommended sanction is warning, censure or suspension. The Tribunal was of the view that this would not reflect the seriousness of Mr Ms Tian’s conduct as whilst she was in possession of unauthorised material (i.e. the information which she received from the other student, as shown by the screenshots), the Tribunal had found that Ms Tian acted dishonestly. Therefore, it could not be said that in this case there was no intention to cheat.

34. Therefore, the Tribunal considered the more severe sanction which is removal from the student register. The indicative sanctions guidance states that this is appropriate where there has been misconduct relating to exams such as:

- Impersonation of another student
- Obtaining improper assistance from another person
- Plagiarism
- Unauthorised materials in the possession of the student with intention to cheat
- Student holding out as CIOT or ATT Member



- Failing to comply with instructions from invigilator
35. The Tribunal was of the view that Ms Tian's conduct included the obtaining of improper assistance on a number of questions and therefore this was sustained or repeated misconduct. It was not isolated. She had also used unauthorised materials and acted dishonestly with the intention of cheating.
  36. In considering mitigating features, the Tribunal noted that in her letter to the ATT, Ms Tian expressed remorse for her actions, but this was only after she had been caught. She had not taken any steps to rectify matters before the ATT contacted her. Further, in not responding to the TDB, Ms Tian has not provided evidence of reflection or insight.
  37. The Tribunal therefore concluded that the appropriate sanction was recommendation of removal from the register. As stated in the Indicative Sanctions Guidance, the Tribunal does not have the power to order removal from the student register as the register, in this case, is maintained by the ATT.
  38. The Tribunal made no order preventing Ms Tian being granted membership status for a period of time or preventing her sitting examinations for a minimum period.
  39. The Tribunal proceeded to consider the issues of costs and publication. The Tribunal saw no exceptional reasons as to why Ms Tian should not pay the TDB's costs. The Tribunal considered the TDB's costs schedule. The Tribunal was of the view that the amount of costs claimed was confined only to the various stages of the disciplinary process and the personnel involved (such as the Presenter and Clerk). The Tribunal also noted that Ms Tian had not responded to the TDB throughout the investigative process despite being offered the opportunity to resolve the matter by a consent order. The Tribunal found in the circumstances that the costs claimed by the TDB were reasonable and proportionate, and ordered that Ms Tian pay the TDB costs assessed at £2,757 including VAT. Rule 27 of the Regulations applies.
  40. Because Ms Tian had not responded to the TDB, there were no submissions from her to cause the Tribunal to disapply the general rule against publication and therefore the Tribunal ordered publication pursuant to rule 28 of the Regulations.

**Brett Wilson**  
**Chair**  
**26.07.2024**