

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

TDB/2024/31

THE TAXATION DISCIPLINARY BOARD

- and -

**MR PAWAL GORCZYCA
(CIOT Membership No. 216511)**

Date of Hearing	6 December 2024
Venue	Virtual using Microsoft Teams
Tribunal Members	
Legally Qualified Chair	Jacqueline Findlay
Professional Member	Abdul Nabi
Lay Member	Karen Rea
Tribunal Clerk	Nigel Bremner
Taxation Disciplinary Board ("TDB")	Represented by Sharmistha Michaels, Counsel
Pawal Gorczyca	Present
Witness	[xxxxxxx]

DECISION AND REASONS

Background

1. Mr Gorczyca is an International Tax Affiliate (ADIT Affiliate) of the Chartered Institute of Taxation (the "CIOT").
2. On 23 December 2023 Mr Gorczyca was arrested for an incident involving pushing [xxxxxx].
3. On 23 April 2024, Mr Gorczyca was convicted and received a financial penalty from the Aberdeen Sheriff Court.

4. On 25 April 2024, Mr Gorczyca notified the CIOT of his criminal conviction.
5. On 26 April 2024, the CIOT referred the matter to the Taxation Disciplinary Board (the "TDB").
6. On 20 August 2024 the Investigation Committee determined that the complaint was not suitable for disposal by means of a Consent Order and referred it to the Disciplinary Tribunal.
7. The Tribunal had regard to the main bundle (MB) of 22 pages and the supplementary bundle (SB) of 19 pages. This evidence included but was not limited to:
 - Correspondence between CIOT and TDB.
 - Correspondence between TDB and Mr Gorczyca (letters and emails).
 - Mr Gorczyca's response form.
 - Letters from [xxxxxx].
 - Extract Conviction Report and Notice of Financial Penalty from Aberdeen Sheriff Court.
 - Letter from Mr I Woodward-Nutt, Solicitor Advocate.

Procedure

8. The Tribunal considered the provisions of regulation 14 of the Taxation Disciplinary Board Scheme Regulations as amended 2016 and January 2024 (the "Regulations") had been complied with.
9. Regulation 29.1 provides that all hearings shall be held in public but that the Tribunal may exclude the press and public from all or any part of the proceedings. No member of the press or public attended the hearing. However, in the event of a transcript being prepared of the hearing, for any reason, the evidence of [xxxxxx] should be private and all references to [xxxxxx] should be redacted.

The Charges

10. The charges set out below refer to the Professional Rules and Practice Guidelines 2018 as amended in 2021 (the "PRPG").

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.

2.14.1 (Obligation to Notify the CIOT)

A member must inform the CIOT in writing addressed to the Head of Professional Standards CIOT, 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 January 2021 – convicted of Summary only road traffic offences.
- 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.

Charge 1

11. On 23 April 2024, Mr Gorczyca was convicted at Aberdeen Sheriff Court and Justice of the Peace Court for the following offence:

On 23rd December 2023 at 3 Loirston Road, Aberdeen, you Pawel Piotr Gorczyca did assault [xxxxxx] and did repeatedly push [xxxxxx] on the body

And it will be proved in terms of Section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 that the aforesaid offence was aggravated by involving abuse of [xxxxxx]

As a result of the conviction set out above Mr Gorczyca received:

- A fine of £640
- An order to pay a surcharge to fund victim services of £40.

Charge 2

12. Consequent upon the facts and matters set out in Charge 1 above:

Mr Gorczyca has engaged in, or been party to, illegal behaviour, contrary to rule 2.2.2 of the PRPG; and/or

Mr Gorczyca 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

13. On the 25 April 2024 Mr Gorczyca disclosed the conviction at Charge 1 to the CIOT. As a consequence, Mr Gorczyca failed to notify the Head of Professional Standards at CIOT within 2 months of his being arrested or charged with a criminal offence referred to in Charge 1.1 contrary to rule 2.14.1 of the PRPG. His arrest should have been reported to CIOT's Head of Professional Standards within 2 months ie by 23 February 2024.

Decision on the Charges

14. Mr Gorczyca has admitted all the Charges. The Tribunal found all the Charges proved.
15. In relation to Charge 1 the Tribunal found it proved on the basis of Extract Conviction dated 30 May 2024 (MB page 16).
16. The Tribunal found that Mr Gorczyca was found guilty of the following offence:

On 23 December 2023 Mr Gorczyca did assault and repeatedly push [xxxxxx] on the body and the offence was aggravated because it involved abuse of [xxxxxx] pursuant to section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. The conviction was disposed by was of a fine of £640 and an order to pay a victim surcharge of £40.
17. The Tribunal found that Mr Gorczyca owes a duty not to act in such a way as to bring CIOT into disrepute or in any way which would harm the reputation or standing of CIOT and was in breach of this duty and in breach of Rule 1.7 of the Rules.
18. Mr Gorczyca must not conduct himself in an unbecoming, unlawful or illegal manner, including in a personal, private capacity, which tends to bring discredit upon him and/or may harm the standing of the profession and/or the CIOT. The conduct includes conduct as part of a member's personal or private life. The Tribunal found Mr Gorczyca was in breach of Rules 2.2.2 and 2.6.3.
19. Mr Gorczyca was under a duty to inform CIOT in writing addressed to the Head of Professional standards CIOT within 2 months when charged with or convicted of a criminal offence. Mr Gorczyca was under a duty to supply details of the nature of the allegation, conviction or caution and provide such relevant

information in relation to it as is reasonably requested. The Tribunal found Mr Gorczyca was in breach of Rule 2.14.1.

20. In reaching its decision on the facts the Tribunal has borne in mind that the burden of proving the facts rests on the TDB and it is for the TDB to prove the charges. The charges can only be found proved if the Tribunal is satisfied, to the civil standard, on the balance of probabilities.

Sanction

21. In determining what, if any, sanction to impose the Tribunal had regard to the Indicative Sanctions Guidance (the "ISG").
22. The Tribunal took into account the admissions and Mr Gorczyca's lack of any previous disciplinary matters before this regulator.
23. The Tribunal has borne in mind 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 is not appropriate in this case.
24. The Tribunal noted that the purpose of imposing a sanction upon a member, *'is not simply to discipline the individual or firm for any wrongdoing of which he 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 judges the conduct to be'*.
25. Any sanction imposed 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.
26. The Tribunal considered the aggravating and mitigating factors in making its decision.
27. The Tribunal considered the mitigating factors put forward by Mr Gorczyca and summarised as follows:
 - a) He sincerely regrets what he did.
 - b) He has apologised to [xxxxxx] and [xxxxxx]. [xxxxxx] has forgiven him and [xxxxxx]. [xxxxxx] wants to move on and [xxxxxx] as normal.
 - c) [xxxxxx] did not suffer any physical marks, bruises, or any other physical harm.
 - d) At the time of the incident, he was under a great stress due to work related deadlines in the run up for Christmas and personal circumstances related to house repairs. This perhaps affected his situational judgement and his unacceptable overreaction.

- e) At the time of the incident, the purpose of his action was to make sure [xxxxxx], and it was not to harm [xxxxxx] in any way.
- f) The offence was not committed in a professional capacity. He has admitted it and cooperated with the authorities.
- g) This was an isolated incident and he has no previous convictions.

28. Mr Gorczyca in evidence told the Tribunal the following:

- a) He has reconciled with [xxxxxx]. He is financially responsible for his family.
- b) He has not informed his employer of his conviction or about these proceedings. He is not 100% sure but he thinks if his employer found out he might lose his job. He had been thinking if he should inform his employer but there was nothing in his contract of employment indicating he needed to make disclosure.
- c) In relation to the hearing Mr Gorczyca asked for the hearing to be made private because [xxxxxx] worked with [xxxxxx].
- d) In relation to publication of the Tribunal's decision, Mr Gorczyca submitted that he did not think in general people were aware of his conviction but publication of the Tribunal's decision would inevitably mean his colleagues and employer would find out and it would affect his employment, his reputation and [xxxxxx] health.
- e) In relation to paying costs of £3,298, Mr Gorczyca stated that he was going to struggle financially this year and next year and he asked for a reduction of the costs and for this to be taken into account if he was ordered to pay compensation or a fine.

29. The Tribunal heard evidence from [xxxxxx] who told the Tribunal the following:

- a) [xxxxxx] was aware of the nature of these proceedings.
- b) It was not [xxxxxx] intention that things would go this far and it would end up in Mr Gorczyca possibly losing his job or reputation. [xxxxxx] would like him to continue with his job.
- c) In relation to the incident on 23 December 2023 [xxxxxx] and Mr Gorczyca had an argument and things got out of control. They were both angry and Mr Gorczyca was mean to [xxxxxx]. He had been drinking at the time and [xxxxxx] did not feel safe. [xxxxxx] was upset and angry about what Mr Gorczyca did so

[xxxxxx] telephoned the Police. He was trying to hold [xxxxxx] and [xxxxx] was wanting to get out of [xxxxx] and go to another place to get away from the arguments.

- d) [xxxxx] believed that such an incident would not happen again because Mr Gorczyca had learned his lesson and he recognised the impact of his actions. They were working [xxxxxx].
- e) [xxxxx] stated that [xxxxx] only worked part time and Mr Gorczyca [xxxxxx].
- f) [xxxxxx] stated that if the Tribunal's decision was published Mr Gorczyca may lose his job, it would affect his reputation and he may struggle to get back on his feet.

30. The Tribunal found the following were mitigating factors:

- a) Mr Gorczyca has expressed regret for his actions and indicated he was aware of the effect on [xxxxxx].
- b) [xxxxxx] has forgiven him, they are [xxxxxx]
- c) At the time of the incident Mr Gorczyca was under stress at work.
- d) There have been no further incidents.
- e) Mr Gorczyca has co-operated with the CIOT and TDB.
- f) The Aberdeen Sheriff Court accepted Mr Gorczyca's pleas to the amended charge which, as explained by Mr Woodward-Nutt, Solicitor Advocate, (page 10MB) amounted to a very minor assault and the Aberdeen Sheriff Court accepted that this was a relatively minor matter that amounted to an isolated incident. The sentence received was at the lower end of the sentencing level.
- g) The Tribunal did not consider that it was a mitigating factor that this incident occurred in Mr Gorczyca's private life and not his professional life. Private conduct amounting to criminal conduct is still professional misconduct which affects the reputation of the profession and public confidence in the profession.

31. The Tribunal found the following were aggravating factors:

- a) The fact that Mr Gorczyca was attempting to hide his conviction and these disciplinary proceedings from his employer demonstrated he did not have full insight into the seriousness of his actions, an understanding of his professional responsibilities and duties and the professional standards expected.
- b) Seeking to avoid the consequences of his actions raises a doubt about his professional integrity.

- c) Mr Gorczyca told the tribunal that alcohol was involved in the incident although he thought this was no more than a few shots of gin.
- d) Mr Gorczyca should have been aware of the obligations on him to report the charges and not just the conviction which demonstrates a lack of awareness of his professional obligations.
- e) The conviction was for a physical assault and [xxxxxx] felt unsafe. The incident was not trivial notwithstanding that the use of force was limited and that [xxxxxx] had no marks or bruises and was not physically harmed other than being pushed.

32. In reaching its decision on the appropriate sanction the Tribunal had regard to the guidance in the ISG including the guidance in the 'Criminal Convictions unrelated to professional work' section. The Tribunal has borne in mind that careful consideration was required. The Aberdeen Sheriff Court had imposed a sentence but the breach of the regulatory regulations requires the Tribunal to deal with the matter.

33. The Tribunal has borne in mind the relevant guidance in the ISG which states:

- 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 practice 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 practice 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 has assessed the different sanctions in ascending order of seriousness. The Tribunal was of the view that taking no further action or allowing the matter to rest on the file was disproportionate to the seriousness of the charges. An apology was clearly not appropriate in the circumstances. The Tribunal was of the view that a warning was not appropriate because the misconduct was more than minor. The Tribunal decided that a censure was not appropriate because although a censure is appropriate where the misconduct is of a serious nature, Mr Gorczyca has not demonstrated insight into the misconduct by trying to hide his actions from his employer to avoid the consequences. Mr

Gorczyca did not demonstrate insight into the professional obligations on him and he has not shown integrity. The Tribunal was of the view that a fine alone or combined with another sanction was not appropriate considering Mr Gorczyca's submissions about his ability to pay.

35. The Tribunal decided that suspension as an International Tax Affiliate of the CIOT for a period of two years was appropriate because the misconduct was sufficiently serious to warrant temporary removal of such status but not so serious as to require permanent removal of such status. In reaching this decision the Tribunal took into account that there was a low risk of a recurrence of the misconduct and the protection of the public could be assured by a temporary removal of ADIT affiliate status.
36. In the Tribunal's judgement, public confidence in the profession, its reputation and its standards would be upheld by the sanction of suspension from ADIT affiliate status, as a reasonable and informed member of the public would feel concerned with any lesser sanction for the same reasons that the Tribunal has outlined above throughout this determination. Thus, the Tribunal concluded that the wider public interest will be preserved by the imposition of this sanction.
37. The Tribunal was of the view that the maximum period of suspension of two years was appropriate taking into account the aggravating factors about Mr Gorczyca's lack of insight into his professional responsibilities and duties.

Costs

38. The TDB applied for costs in the sum of £3,298.
39. The Tribunal found that the costs schedule was sent to Mr Gorczyca by email on 4 December 2024 (page 18 SB).
40. The Tribunal had regard to the Guidance on Awarding Costs in dealing with a Defendant against whom a charge has been proved. The presumption that an 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 upon themselves disciplinary proceedings.
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 found no reason to depart from that presumption and found no exceptional circumstances.
42. The Tribunal considered the schedule and considered that the costs outlined were proportionately and reasonably incurred. Mr Gorczyca has submitted no evidence about his financial situation and ability to pay.

43. The Tribunal was of the view that the costs of £3,298 were relevant to this case and would not have been incurred save for his own failings and actions.
44. The Tribunal decided that Mr Gorczyca should pay £3,298 in costs to the TDB.

Publicity

45. The Tribunal noted the contents of Annex B of the ISG on the publication of disciplinary findings and regulation 28.
46. Mr Gorczyca asked that the matter be not published because in the greater context the matter was not of a serious nature and publication may adversely affect [xxxxxx], the victim. It could lead to reputational loss for himself and professional and financial consequences which would impact the reputational and financial well-being of [xxxxxx], the victim.
47. The Tribunal noted the general principle that any disciplinary finding made against a 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 a sanction upon a member against whom a disciplinary charge had been proved.
48. The Tribunal further noted that under regulation 28.3, it had a discretion to order that the name of the member or the details of orders made against them should not be published. The Tribunal did not find any circumstances that would justify an order for no publicity but did find circumstances for [xxxxxx] evidence, references to [xxxxxx], [xxxxxx] health and employment to be redacted from this decision and the outline description of the case which will appear on the TDB website.
49. The Tribunal ordered that, in accordance with regulations 28.1, this Decision and Reasons should be published as soon as practicable. The decision and reasons should remain on the TDB website for a period of 3 years in accordance with Annex B of the ISG. [xxxxxx] name should be redacted as should any references to [xxxxxx].

Effective Date

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

Jacqueline Findlay

Mr Pawal Gorczyca TDB/2024/31

Chair, Disciplinary Tribunal
4 December 2024