

**Mr Philip Bruce-Dewar of Renfrew, United Kingdom
CIMA Disciplinary Committee hearing held on 26 July 2018**

The Charge

1. On 22 January 2018 Mr Philip Bruce-Dewar (the Respondent) was convicted of an offence under section 127(1)(a) of the Communications Act 2003.
2. On 26 February 2018 he was sentenced to the following:
 - a. A 3 year Supervision Order
 - b. 250 hours Community Payback Order

By reason of paragraphs 1-2 above, it was alleged that he was guilty of misconduct as defined by the Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (October 2012 and July 2015 versions), as follows:

- a) "...in respect of any Member...(ii) conduct resulting in any conviction...relevant to their membership...with the Institute."

CIMA considered Bruce-Dewar's conduct which resulted in his conviction relevant to his CIMA membership as it constituted a breach of the fundamental principles of the Code of Ethics (October 2010 version), in particular (Professional Behaviour: Sections 100.5(e) and 150)

- b) "failure to comply with the Laws of the Institute"

CIMA considered his conviction and his conduct which resulted in his conviction a failure to comply with the Laws of the Institute in particular breaching the fundamental principle (Professional Behaviour: Section 100.5 (e) and Section 150) of the Code of Ethics (October 2010 and January 2015 version).

Background

1. The Respondent referred himself to CIMA in an email dated 21 February 2018, in which he confirmed that he had been convicted of a criminal offence in contravention of the Communications Act 2003.
2. The offence related to the exchange of messages sent by the Respondent via an instant messaging service over the course of two days. The Respondent's on-line contact asked him about a child, to whom the Respondent had access, 'Are you going to try anything with him?' and the Respondent replied, 'Hmmm, time will tell'. The police had seized the Respondent's phone at his home while acting on information they had received, and the chat logs were recovered using forensic software. As the Respondent denied the offence the criminal trial took place at Falkirk Sherriff Court over the course of two days in January 2018.
3. An article from the Falkirk Herald reported that at Falkirk Sheriff Court the sentencing judge is reported to have said:

“Time will tell’ is not in any way an acceptable answer when someone is asked if they’d have sex with a five-year-old child. He didn’t say, ‘that’s horrendous, I’m totally insulted that you should ever think I’d do something like that’, and shut the conversation down – he continued it. I think these comments are menacing to children.”

Legal Assessor’s Advice

4. The Legal Assessor advised that the burden of proving the facts was on CIMA and that the charges could only be found proved, if the Committee was satisfied, on the balance of probabilities. She further advised that the Committee could not go behind the conviction and was required to accept the certification from Falkirk Sheriff Court as conclusive proof of the conviction itself and the underlying facts.
5. The Legal Assessor also advised that given the admissions made by the Respondent to both Charges the facts can be found proved by reason of his admissions.
6. Thereafter the Legal Assessor advised that the Committee must determine, once facts are found proved, whether they amount to misconduct. She reminded the Committee that misconduct is given a wide meaning by CIMA and includes conduct resulting in a conviction and a failure to comply with any Laws of the Institute. Any Charge found proved must be

sufficiently serious in itself to amount to misconduct. She reminded the Committee to take account of all the evidence presented, including the Respondent's responses and written submissions. In addition, when considering misconduct, the Committee should also refer to the parts of the Code, Regulations and Byelaws which it considers relevant and as referred to in the Charges themselves.

7. The Legal Assessor went on to advise the Committee that if it determined that any allegation amounted to misconduct, individually or cumulatively, it must then determine whether it is sufficiently substantial to warrant further action by way of sanction. She referred the Committee to the current Indicative Sanctions Guidance ("the ISG") and advised that any sanction must always be proportionate and take account of the need to balance the public interest against the Respondent's interests. The purpose of any sanction is to protect to the public and the public interest and not be punitive, although it may have that effect. In particular she advised that the Committee take into account all aggravating and mitigating factors and consider the sanction options available in ascending order of severity to ensure that the least restrictive sanction is imposed which protects the public and maintains the public interest, having regard to the nature of any misconduct and the allegations found proved. Account should always be taken of any insight shown, including expressions of remorse and any evidence of remediation.
8. The Legal Assessor further advised the Committee that the public interest includes protection of the public, public confidence in the profession and CIMA as the regulator, as well as upholding proper standards of conduct and performance. Such a consideration must always be at the forefront of any decision made.

Findings of Fact

9. The Respondent admitted the facts of the Charge, as set out in the Respondent's email to CIMA, dated 7 June 2018. On the basis of the admissions made by the Respondent and the Certificate of Conviction, the Committee accepted as conclusive evidence that he was convicted of an offence under 127(1)(a) of the Communications Act 2003 on 22 January 2018 and was therefore satisfied that the facts have been proved.

Misconduct

10. The facts having been found proved, the Committee considered the matter of misconduct. CIMA's Byelaws and Regulations define "misconduct" as conduct resulting in a conviction relevant to membership and failure to comply with the Laws of the Institute. The Laws of the Institute include the Code of Ethics.
11. The Respondent had a professional obligation to observe high standards of personal conduct and behaviour. CIMA, members of the public and fellow members of the profession have the right to expect that the Respondent would ensure that he does not commit a serious criminal offence. The Committee was aware that breach of the Byelaws alone does not necessarily constitute misconduct. However, the Committee was satisfied that the Respondent's conduct and behaviour, which resulted in the criminal offence, fell far below the standards expected of a registered member and concluded that it is sufficiently serious to be characterised as misconduct as it has the potential to seriously undermine public trust and confidence in the Respondent and the regulatory process.

Mitigation and Sanction

12. Having found misconduct as alleged, the Committee went on to consider the questions of mitigation and sanction. In considering what sanction (if any) to impose, the Committee had regard to the ISG and the advice of the Legal Assessor. It also had regard to the principle of proportionality and that the sanction imposed should be the least onerous suitable to reflect the seriousness of the misconduct.
13. The Committee identified the following aggravating factors:
- The criminal offence was sexually motivated;
 - The Respondent is (or was) the founder of Tuition Scotland and therefore a senior employee in a position of trust;
 - The conduct and behaviour related to a vulnerable child;
 - The Respondent's conviction for a serious offence has the potential to significantly undermine CIMA's reputation.
14. The Committee identified the following mitigating factors:

- The criminal offences occurred over a short period;
- The Respondent's conduct appeared to be impulsive;
- The Respondent voluntarily referred himself to CIMA;
- The Respondent expressed remorse during his written submissions which the Committee accepted as genuine.
- As a consequence of the Respondent's conviction he has lost his job and his adopted child has been taken into care.

15. The Committee first considered taking no action. The Committee concluded that, in view of the nature and seriousness of the Respondent's criminal conviction, and in the absence of exceptional circumstances, it would be wholly inappropriate to take no action.

16. The Committee then considered an Admonishment. The Panel noted that the ISG states:

'An admonishment may be appropriate where the conduct is at the lower end of the spectrum...'

17. The Committee concluded that the Respondent's conviction and the underlying conduct and behaviour, although isolated and limited, could not be described as minor in nature. As a consequence, the Committee concluded that an Admonishment would be wholly inappropriate and insufficient to meet the wider public interest concerns raised by the Registrant's convictions. Furthermore, the Committee concluded that it would be insufficient to maintain public confidence in the regulatory process and uphold the reputation of the profession.

18. The Committee went on to consider a Reprimand or a Severe Reprimand. The Committee noted that the ISG states that a Reprimand:

'...is appropriate where the conduct is of a minor nature and there is no continuing risk to the public.'

19. A Severe Reprimand is considered 'to be more severe than a Reprimand.'
20. The Committee concluded that the Respondent's conviction was serious and in these circumstances a Reprimand or even a Severe Reprimand would fall well short of meeting the wider public interest in terms of declaring and upholding proper standards or maintain public confidence in the profession.
21. The Committee, having concluded that a financial penalty would serve no useful purpose, went on to consider Conditional Membership. The Committee took the view that the Respondent's conviction is not amenable to conditions as the basis for the underlying conduct and behaviour is an attitudinal failing. The Committee was unable to formulate conditions which would be workable, measurable or proportionate. Furthermore, conditions would not adequately address the serious nature of the Respondent's actions and would seriously undermine public confidence in the profession, CIMA as a regulator and the need to uphold high standards of conduct and behaviour.
22. The Panel also took into account the case of CRHP v GDC and Fleischman [2005] EWHC 87 Admin, where it was made clear that if a registrant has been convicted of a serious criminal offence and is still serving their sentence at the time the matter comes before a panel, the panel should not normally permit the registrant to resume their practice until that sentence has been satisfactorily completed. The Panel noted that the Respondent would remain subject to a Supervision Order until 2021.
23. The Panel next considered a Suspension Order. A Suspension Order would send a signal to the Respondent, the profession and the public re-affirming the standards expected of a member of CIMA. However, the Committee concluded that a Suspension Order would not be sufficient to maintain public trust in the profession and the regulatory process.
24. Having determined that a Suspension Order does not meet the wider public interest the Committee determined that the Respondent should be expelled

from membership of CIMA. An Expulsion Order is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. The Committee decided that the Registrant's case falls into this category because he voluntarily engaged in a discussion, albeit brief, in relation to the sexual abuse of a child. The Committee acknowledged that no actual harm was caused but took the view such conduct and behaviour is fundamentally incompatible with continued membership. The Committee was also satisfied that any lesser sanction would undermine public confidence. The public and the profession are entitled to expect a member of the profession to uphold the highest standards of trust, confidence and behaviour. In reaching this conclusion the Committee balanced the wider public interest against the Respondent's interests. The Committee had regard to the impact an Expulsion Order would have on the Respondent, but concluded that his professional, personal and financial interests were significantly outweighed by the Committee's duty to give priority to the significant public interest concerns raised by this case.

25. The Panel decided that the appropriate and proportionate order is an Expulsion Order.

Costs

The Committee considered CIMA's application for costs as set out in the schedule of estimated costs served on the Respondent on 20 June 2018.

The Committee also considered the responses from the Respondent in relation to being able to pay a costs order. The Committee took into account the limited information provided by the Respondent about his financial means.

The Committee has decided it is appropriate to make an award for costs and that the Respondent should be required to make a contribution of £1,000 towards CIMA's costs.