

**Mr James Sobotowski of Billingham, Stockton on Tees, UK
CIMA Disciplinary Committee meeting held 11 August 2020**

References in this decision to Regulations are to those in the Institute's Royal Charter, Byelaws and Regulations (2020) and references to Rules are to the Institute's Disciplinary Committee Rules 2020, in both cases unless otherwise stated.

The Charge

The Committee considered the following allegations against Mr Sobotowski (the Respondent):

Factual Allegations

1. On 23 January 2020 Mr Sobotowski was convicted upon his own confession, of Fraudulent Evasion of Value Added Tax.
2. The conviction related to the fraudulent evasion of Value Added Tax occurring between 1 March 2014 and 31 May 2015 in the sum of £132,200.
3. Mr Sobotowski was sentenced for the above offence to –
 - 16 months imprisonment suspended for 24 months
 - Must carry out unpaid work for 80 hours
 - Pay £525 towards the cost of the prosecution
 - Pay a victim surcharge of £100
4. Mr Sobotowski's conduct which resulted in the conviction was dishonest.

Misconduct Allegations

By reason of the facts alleged above, either individually or collectively, it was alleged that Mr Sobotowski was guilty of misconduct as defined by the Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (October 2012, July 2015 and December 2018 versions), as follows:

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

CIMA considered Mr Sobotowski's conduct which resulted in the conviction relevant to his membership as it constituted a breach of the fundamental principles of the Code of Ethics (October 2010, January 2015 and January 2020 versions), in particular (Integrity and Professional Behaviour)

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

CIMA considered the conviction and Mr Sobotowski's conduct which resulted in his conviction, a failure to comply with the Laws of the Institute in particular breaching the fundamental principles (Integrity and Professional Behaviour) of the Code of Ethics (October 2010, January 2015 and January 2020 versions).

Findings of Fact

The Institute had produced to the Committee a certificate of conviction which established that the Respondent was convicted of an offence of dishonesty in regard to VAT fraud at Durham Crown Court on 23 January 2020. The Committee found that this was conclusive proof of the facts of the charge. The Respondent had admitted the facts of the Charge, and on the basis of the certificate of conviction, the Committee found the facts proved. However, and for the avoidance of doubt, the Committee also considered the admissions made by the Respondent and the relevant documents relied upon by CIMA in relation to each allegation of fact.

The Committee was satisfied that all the facts are proved on the Respondent's admission, supported by the documentary evidence.

Misconduct

The facts having been found proved, the Committee considered the matter of misconduct. CIMA's Byelaws and Regulations define "misconduct" as "failure to comply with the Laws of the Institute." The Laws of the Institute include the Code of Ethics.

In relation to the charge set out above, the Committee made the following findings:

The fact of the conviction was a clear breach of the Byelaws and Regulations and in particular the Code of Ethics. The Respondent was in breach of the fundamental principles of the Code requiring that members must act with integrity and in conformity with professional behaviour at all times. The Code has been updated periodically in 2010, 2015 and 2020 but all share the same requirement for members to conform with the Fundamental Principles of Integrity and Professional Behaviour.

The matter related to a fraud which was committed between 1 March 2014 and 31 May 2015 in the sum of £132,200. The 2015 version of the Code which captures the obligations common to all versions sets out at Section 100.5 that the fundamental principle of integrity is defined as being straightforward and honest in all professional and business relationships. Section 110.1 goes on to say that Integrity also implies fair dealing and truthfulness. Professional Behaviour is defined in Section 100.5(e) of the Code and requires that members comply with relevant laws and regulations and avoid any action that discredits the profession.

The Committee found that the respondent's conviction was a clear breach of the Code in all of its relevant versions. The Committee had regard to the judge's sentencing remarks in which he referred to the obligation to hold VAT sums due essentially in trust for HMRC '*...on behalf of all of us*', pointing out what must be obvious to all members that the sums are not the property of the person holding the sums temporarily and import an obligation to properly report and pay over the sums due incrementally.

Mitigation and Sanction

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 Indicative Sanctions Guidance and to 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. The Committee took into account the submissions made by the Respondent's solicitors in regard to mitigation and sanction. The Respondent had a long professional history without previously coming to the adverse attention of the Institute.

The Committee took into account the following aggravating and mitigating factors.

The misconduct was aggravated by being conducted over a lengthy period of time, and was conduct which the Respondent admits that he knew to be wrong. The profession has been brought into disrepute. The Respondent failed to act as he should have by refusing to participate in the scheme (in which he was a junior participant but an essential one). The Respondent made some gains as a result of his participation in that he retained his job which would otherwise have been lost.

The misconduct was mitigated by the Respondent's seemingly genuine remorse and his cooperation with the Institute in these proceedings. He made full admissions. The Committee accepted that he acted under some duress and pressure by the author of the fraudulent scheme.

The Committee considered each sanction in increasing order of restrictiveness beginning with the least restrictive.

The Committee considered that an admonition would not meet the seriousness of this case and would not address the harm to the reputation of the profession caused by the Respondent's misconduct.

The Committee considered that a Reprimand would not be suitable or a proportionate sanction. There remained a risk, in the Committee's view, that the Respondent might again succumb to pressure or bullying professionally and the risks to the public created by that made this sanction inappropriate.

The Committee considered that a severe reprimand would not be appropriate in a case where there had been a criminal conviction of this nature resulting in a period of imprisonment, even though suspended for a period of time, had been decided upon by the sentencing judge.

In the Committee's view, a fine was not an appropriate sanction for the same reasons.

The Committee considered whether conditions of practice could be framed which would be workable, measurable and proportionate. After consideration, the Committee found that there were no conditions which would address the fundamental breach of the Code of Ethics. The Respondent could have called the Institute for advice and assistance when he was first pressured into participating in the fraudulent scheme, but he failed to do so. In addition, the Institute would expect any member to report to the appropriate authority, to CIMA and to walk away from any situation where she or he was put under pressure to behave in an unethical or criminal way. The Committee could not be satisfied that he would engage with conditions successfully and in any event the Committee could not devise conditions which addressed the issue of a lack of integrity linked to this case.

The Committee considered whether it could impose a period of suspension of up to two years. The Committee however was not satisfied that this would serve to protect the public adequately given the propensity of the Respondent to succumb to pressure of the kind applied to him in this case.

The Committee therefore concluded that the appropriate and proportionate sanction was one of expulsion and ordered the respondent to pay the sum of £1,825 in costs.