

CIMA Disciplinary Committee Meeting held on 9 June 2020 Mr Jayson Nunkoo of Manchester, United Kingdom

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 2015, in both cases unless otherwise stated. The Disciplinary hearing was conducted in the presence and under the advice of an independent legal assessor.

Background Facts

1. Mr Nunkoo was employed by a company as a finance manager for a unit, part of the Company between May 2015 and 22 August 2019 when he was dismissed. During this time, he was a registered Member with CIMA.
2. On 9 July 2019, the Company made an announcement to the London Stock Exchange. The Company reported that it was postponing its AGM following the identification of historical accounting issues over the three years ending 31 March 2017, 2018 and 2019 arising from an overstatement of certain asset values and profit during this period by approximately £1.8m in the said unit. The announcement further stated that the investigation indicated the overstatement of profit had arisen from intentional mis-statement at a local level.
3. On 27 August 2019, the Company made a further announcement to the London Stock Exchange. It stated that following the completion of a more extensive independent investigation it had concluded that the cumulative effect of the mis-statements had resulted in net assets at 31 March 2019 being overstated by £2.5m in total. The independent investigation concluded that the misstatement was a result of intentional mis-reporting of financial information at a local level. When the Company reported the alleged misconduct to CIMA it confirmed that the mis-statement of profit on closing reserves, as at 31 March 2019, identified in the independent investigation was £2.3m of which £1.7m related to the correction of Sub-C adjustments and £0.6m related to additional adjustments required to the SAP balance sheet. Of the £2.3m there was £269,000 of missing accruals and provisions (holiday pay accrual and inventory provision), which could not categorically be attributed to Mr Nunkoo's deliberate activities to overstate profit.
4. Mr Nunkoo participated in the investigation by attending interviews on 23 July 2019 and 26 July 2019. He confirmed that the minutes of these meetings were a fair and accurate record. During those meetings, Mr Nunkoo admitted to deliberately mis-stating the financial position of the unit and amending documentation to legitimise entries.

Factual Allegations

Allegation 1

Mr Nunkoo used Sub-C adjustments to manipulate the reported profit position for the Milnrow site.

Allegation 2

He mis-stated the financial results for the Milnrow site since the financial year ended 31 March 2016.

Allegation 3

He deliberately sought out opportunities such as older creditor balances that could be used to justify account balances that he knowingly used to misstate profit.

Allegation 4

He deliberately manipulated information provided to the auditor.

Allegation 5

Mr Nunkoo's actions at allegations 1-4 were dishonest.

Misconduct allegations

5. By reason of the facts alleged above, either individually or collectively, Mr Nunkoo was guilty of misconduct as defined in Byelaw 1 of the Institute's Royal Charter Bylaws and Regulations (July 2015 and December 2018 versions).
6. In particular, he failed to comply with the Laws of the Institute by breaching the following fundamental principles of the Code of Ethics (January 2015 version):
 - a. Integrity – (Sections 100.5(a) and 110);
 - b. Objectivity – (Sections 100.5(b) and 120);
 - c. Professional Competence and Due Care – (Sections 100.5(c) and 130); and
 - d. Professional Behaviour – (Sections 100.5 (e) and 150).

Findings of Fact

7. Mr Nunkoo admitted the factual allegations in his signed Rule 4(2) application form dated 13 March 2020. On the basis of admissions made by the Respondent, the Committee found the facts proved. In reaching this conclusion the Committee also considered the relevant documents relied upon by CIMA in relation to each allegation of fact.
8. The Committee was satisfied that all the facts found proved by reason of his admission were supported by the documentary evidence.

Misconduct

9. The Committee, having found the facts proved, went on to consider misconduct. The Committee noted that 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. The Preface to the Code of Ethics explicitly states that it has been adopted by the Institute and includes the following Note: "*The CIMA Code of Ethics is a Law of the Institute (to which all members and registered students are required to comply) for the purpose of the definition of "misconduct" in Byelaw 1.*" Accordingly, a breach of the Code of Ethics constitutes a failure to comply with the Laws of the Institute and can, therefore, amount to misconduct.
10. Mr Nunkoo had a professional obligation to observe high standards of personal conduct and behaviour. The Committee was aware that a breach of the Byelaws alone does not necessarily constitute misconduct. However, CIMA, members of the public and fellow members of the profession are entitled to expect him to uphold the Fundamental Principles of the Code of Ethics, at all times. In particular, the Committee considered the Fundamental Principles of Integrity, Objectivity, Professional Competence and Due Care and Professional Behaviour.

11. In relation to the charges (set out above), the Committee made the following findings:

Integrity

12. Section 100.5(a) of the Code of Ethics defines the fundamental principle of integrity as follows:

“Integrity – to be straightforward and honest in all professional and business relationships.”

13. Section 110.1 of the Code of Ethics provides additional guidance:

“The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.”

14. Mr Nunkoo by his own admission acted dishonestly. He made multiple adjustments to the financial records of the company over a significant period of time. The adjustments were significant and it is likely that his actions had a substantial impact on the reputation of the company. His admission of dishonesty was supported by the admissions he made when he was interviewed during the internal investigation. These admissions included:

- Using Sub-C adjustments to manipulate the reported profit position for the unit;
- Mis-stating the financial results for the unit since the financial year ended 31 March 2016;
- Deliberately seeking out opportunities such as older creditor balances that could be used to justify account balances and knowingly using them to misstate profit;
- Deliberately manipulating information provided to the auditor.

15. The Committee concluded that the admissions made by Mr Nunkoo individually and collectively represented a significant breach of the fundamental principle of integrity. These breaches were sufficiently serious to amount to misconduct.

Objectivity

16. Section 100.5(b) of the Code of Ethics defines the fundamental principle of objectivity as follows:

“Objectivity – to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.”

17. Section 120.1 of the Code of Ethics provides additional guidance:

“The principle of objectivity imposes an obligation on all professional accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.”

18. Mr Nunkoo admitted a number of deliberate and conscious actions which were aimed at misstating the profit of the unit. He demonstrated a lack of objectivity by permitting a desire to show a profit to override his professional judgment. The Committee concluded that these actions were a breach of the fundamental principle of objectivity and that the breach was sufficiently serious to amount to misconduct.

Professional Competence and Due Care

19. Section 100.5(c) of the Code of Ethics defines the fundamental principle of Professional Competence and Due Care as follows:

"Professional Competence and Due Care – maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technique and professional standards."

20. Section 130.1 provides additional guidance:

"The principle of professional competence and due care imposes the following obligations on all professional accountants:

(a)....

(b) To act diligently in accordance with applicable technical and professional standards when performing professional activities or providing professional services."

21. Mr Nunkoo made a number of admissions which clearly demonstrated a failure to act diligently and that breach was sufficiently serious to amount to misconduct.

Professional Behaviour

22. Section 100.5(e) of the Code of Ethics defines the fundamental principle of Professional Behavior as follows:

"Professional Behavior – to comply with relevant laws and regulations and avoid any action that discredits the profession."

23. Section 150.1 of the Code of Ethics provides additional guidance:

"The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession."

24. The Committee concluded that Mr Nunkoo's conduct and behaviour fell far below the standards expected of a registered member. His actions brought the profession into disrepute and had the potential to undermine trust and confidence in the profession as a whole. The Committee concluded that the breach of the fundamental principle of professional behaviour was sufficiently serious to amount to misconduct.

Mitigation and Sanction

25. 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.
26. The Panel took into account the following aggravating and mitigating factors.
- Mr Nunkoo's acts and omissions were repeated, persisted for a long period of time, and involved a significant breach of his employer's trust;
 - His conduct and behaviour was deliberate, planned and involved a persistent attempt to cover up his wrongdoing;
 - He was a senior member of the profession and as a consequence his conduct and behaviour should be an example to others;
 - He demonstrated limited insight into the impact of his conduct on his professional standing and the wider profession.
27. Mr Nunkoo, in his written submissions, stated that a skills shortage within the company, his own lack of experience and his co-operation with the internal investigation amounted to mitigating factors.
28. He stated with regard to a skills shortage that:

"...the key cause of my mistakes stemmed from my inability to reconcile retained earnings after the first financial year of reporting. I asked for support to help me correctly understand specific accounting treatments under Renold's accounting policies but did not receive any from within Renold. The only time I eventually did get support was in 2019 when an external accountant was recruited as part of the investigation who then was able to explain my errors. In hindsight, I should have been more rigorous in raising these gaps earlier.

What might have been a contributing factor was that I was often left on my own to report numbers with no checks or questioning by Senior Finance members (TT FD, Group FD) being made. There was a genuine lack of questioning and control of account submissions considering all my adjustments and accounts were always shared each and every month with the Finance Director and Group Finance. The adjustments were never questioned for years but were always visible to FD and Group Finance."

29. The Committee took the view that this did not amount to a mitigating factor. There was no evidence before the Committee that the Mr Nunkoo asked for support from his employer and no credible explanation for the decision he took to dishonestly reconcile the retained earnings.
30. Mr Nunkoo indicated that his lack of experience was an important factor. He stated that he felt that the poor performance of the company was his responsibility and that:

"In reality, I had little exposure to "traditional" accounting tasks such as P&L and Balance Sheet reporting, Cash Forecasting (where these are managed centrally by systems and at Global Shared Service Centres) and also no experience of managing people. I took the role at Renold believing I did have the skills and wanted to further develop my career by taking the next step towards a higher level of management. Again, in hindsight, I did not have the experience and struggled. There is a question

as to why I did not leave and my simple answer is that I do not believe I am a “quitter” and wanted to work hard to ideally learn and fix these issues (as reference to P31 of the investigation interview minutes). to identify was the Respondent’s admission (sic).”

31. The Committee took the view that this did not amount to a mitigating factor. Mr Nunkoo was in a senior role and it was his responsibility to perform the role to the standard expected of a CIMA member.
32. The Committee noted that he fully co-operated with the internal investigation. He was open and honest about the extent of his wrongdoing, made full admissions to the factual allegations and demonstrated some insight. The Committee concluded that these were the only features which amounted to mitigating factors.
33. The Committee first considered taking no action. The Committee concluded that, in view of the nature and seriousness of Mr Nunkoo’s conduct and behaviour, and in the absence of exceptional circumstances, it would be wholly inappropriate to take no action.
34. The Committee then considered an Admonishment. The Panel noted that the Indicative Sanctions Guidance (ISG) states:

‘An admonishment may be appropriate where the conduct is at the lower end of the spectrum...’
35. The Committee concluded that Mr Nunkoo’s acts and omissions, could not be described as minor in nature. His conduct was deliberate and was repeated. As a consequence, the Committee concluded that an Admonishment would be inappropriate and insufficient to meet the wider public interest concerns raised by his conduct. Furthermore, the Committee concluded that it would be insufficient to maintain public confidence in the regulatory process and uphold the reputation of the profession.
36. 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.’
37. A Severe Reprimand is considered *‘to be more severe than a Reprimand.’*
38. Mr Nunkoo invited the Committee to impose a Severe Reprimand together with a financial penalty. The Committee concluded that his conduct and behaviour 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 maintaining public confidence in the profession. Furthermore, the Committee concluded that a financial penalty would be purely punitive. It would not adequately address the need to uphold high standards of conduct and behaviour of CIMA members or maintain public confidence in the profession.
39. 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 Mr Nunkoo’s conduct was not amenable to conditions as the basis for the underlying conduct and behaviour was 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 Mr Nunkoo’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.

40. The Panel next considered a Suspension Order which would send a signal to Mr Nunkoo, the profession and the public re-affirming the standards expected of a member of CIMA. However, the Committee noted that there would be a reasonable expectation following a period of suspension that the member would be able to return to practice having remedied their attitudinal failings. In this case the Committee could not be satisfied that Mr Nunkoo would be able to remedy these failings and therefore concluded that a Suspension Order would not be sufficient to maintain public trust in the profession and the regulatory process.
41. Having determined that a Suspension Order did 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 Mr Nunkoo's case fell into this category because in the absence of fully developed insight and remediation there is an ongoing risk of harm to members of the public. The Committee noted that he believed that he could '*still add value*' to CIMA but it concluded that his conduct and behaviour was 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 Mr Nunkoo's interests. The Committee had regard to the impact an Expulsion Order would have 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.
42. The Panel decided that the appropriate and proportionate order was an Expulsion Order.

Costs

43. The Committee considered CIMA's application for costs as set out in the schedule of estimated costs served on the Respondent on 9 April 2020.
44. The Committee decided that it was appropriate to make an award for costs. The Committee determined that Mr Nunkoo should be required to make a contribution of £1,825.00 towards CIMA's costs, otherwise the costs of bringing these proceedings will be borne solely by the profession as a whole.