

**Mr Steven Moran of Newport Pagnell, Buckinghamshire, UK  
CIMA Disciplinary Committee Hearing held 4 November 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 Charge against Mr Moran (the Respondent) was as follows:

Factual Allegations

1. Mr Moran was, at all relevant times, a registered Associate Member of CIMA. admitted as a registered Associate Member of CIMA in April 1994.
2. At all relevant times he was the sole Director of ■ Ltd. He was appointed as a Director of ■ on 31 May 2011.
3. Between May 2012 at the latest and June 2013, he caused or allowed ■ to participate in transactions which were connected with the fraudulent evasion of Value Added Tax (VAT).
4. Mr Moran knew or ought to have known that these transactions were connected with the fraudulent evasion of VAT.
5. In particular, he failed to put in place and carry out appropriate due diligence checks of ■'s supply chains in accordance with the HM Revenue and Customs (HMRC) guidance on avoiding Missing Trader Intra Community (MTIC) VAT fraud despite:
  - (a) HMRC's repeated advice and alerts that he should do so; and
  - (b) the numerous HMRC notices and communications regarding its findings of fraudulent evasion of VAT in ■'s supply chains and the resulting tax losses incurred by HMRC.
6. Between 18 April 2019 and 11 February 2020, Mr Moran was subject to civil proceedings before the High Court brought by the Official Receiver of ■. As a result of his actions as described at paragraph 5 above, the Official Receiver sought his disqualification for a period of 12 years pursuant to Section 6 of the Company Directors Disqualification Act 1986.
7. On 11 February 2020, pursuant to Section 6 of the Company Directors Disqualification Act 1986, the High Court issued a disqualification order (the Disqualification Order) which provided that he shall not:
  - (a) be a Director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) he has leave of the court; and
  - (b) act as an insolvency practitioner,for a period of 12 years beginning at the end of the period of 21 days beginning with the date of the Disqualification Order (i.e. 11 February 2020).

Misconduct Charges

8. These actions constituted misconduct as defined by Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (August 2011, October 2012 and December 2018 versions). In particular, Mr Moran's actions amounted to:
  - (a) "conduct resulting in any ... adverse finding by, or sanction or order of, or undertaking to, any tribunal or court or other body or authority relevant to [his] membership ... with the Institute" in that they resulted in a Disqualification Order against you for a period of 12 years; and

(b) a “failure to comply with the Laws of the Institute” in that they constituted a breach of the fundamental principles of the Code of Ethics (October 2010 and January 2020 versions), which is applicable to all Members of the Institute.

9. In particular, his actions breached the following fundamental principles of the Code of Ethics (October 2010 and January 2020 versions):

- (i) Professional Competence and Due Care - (Sections 100.5(c) and 130 of the October 2010 version and Sections 110.1 A1(c) and 113 of the January 2020 version); and
- (ii) Professional Behaviour - (Sections 100.5 (e) and 150 of the October 2010 version and Sections 110.1 A1(e) and 115 of the January 2020 version).”

## Background

Mr Moran (the Respondent) became a director of a formerly dormant company ██████ Ltd as shown in an extract of company officers held at Companies House dated 16 September 2020. The Respondent became the sole director. The company was registered for VAT and required to submit quarterly returns to HMRC between 1 July 2011 and 28 June 2016 when it submitted its final return.

It was alleged that the company traded as a wholesaler in Internet voice calls, using Voice Over Internet Protocol (VOIP). As part of the company's obligations to HMRC, it was required to verify the VAT status of new and potential customers or suppliers through the HMRC office in Wigan and to take active steps to prevent MTIC fraud.

The evidence showed that HMRC made the Respondent aware of these obligations, gave advice on how to operate lawfully and properly, and how to spot missing trader fraud. The case against The Respondent made by the Institute was that The Respondent, as the sole person responsible for the operations of the company and so responsible for its VAT compliance had failed to act repeatedly on warnings and advice given by HMRC officers following a series of inspection visits. The Respondent had been given documents by HMRC to help him spot when a missing trader fraud might be occurring in his business, along with practical assistance to help him remedy matters. When HMRC returned to visit him due to no steps having been implemented to stop the fraud that had been identified by it, he was warned that European Court of Justice caselaw permitted HMRC to deny ██████ credit for VAT inputs, resulting in potentially large payments falling due. The scale of the fraud was allegedly made clear to the Respondent.

The Institute asserted that nothing was done by the Respondent to stop the fraud, which had resulted in losses of revenue to HMRC. Allegedly, discs containing call data was taken from ██████ by HMRC for analysis, which revealed that fraud was continuing unabated. Later, HMRC recovered 22 more discs of call data for the same period covered by the first five discs, but revealing information in much more detail. Inexplicably, other than by reason of fraud, the data for the same calls did not match and some calls were attributed to a period allegedly after the period under examination.

The evidence showed that HMRC estimated £2,041,116 in lost revenue had been accrued due to the Respondent having failed to take action to prevent the fraud that he was facilitating through ██████. HMRC levied a VAT demand on ██████ for more than £295,000 and demanded payment almost immediately, failing which, steps to wind up ██████ would be taken. No payment was received and so HMRC carried out its intended course in regard to ██████ and in addition precipitated a petition to the High Court by the Official Receiver to have the Respondent disqualified from being a company director or being actively involved in the management of any company for 12 years.

Allegations 1 and 2.

The Committee took allegations 1 and 2 together. It was satisfied that the unchallenged screen shot of the Institute's membership records and the records of Companies House proved the facts alleged.

Allegations 3, 4 and 5.

The Committee found that the documents and the statements were entirely persuasive for the relevant period of time, the Respondent had either caused or permitted ■■■ to participate in the fraudulent evasion of VAT. He was the sole directing mind of the company and the only person with the responsibility to put protective measures in place against missing trader fraud, and to implement those steps diligently and carefully.

The Committee was satisfied that the Respondent knew or ought to have known given his position in the company that the transactions were connected to VAT fraud. There was detailed evidence helpfully illustrated by CIMA showing the lengths that HMRC had gone to in order to assist the Respondent in his task. He could not have been unaware of his responsibilities and the measures that he required to take other than by wilful or culpable disregard of those obligations.

In particular, the anomaly that the original bundle of data taken from the company in five discs did not match the same data which were recovered in a second batch of 22 discs uplifted was very striking. There were records of calls sold without matching customer details, records of invoices to customers without any record of a call having been made by the customers and records of calls that should not have existed; calls for periods of time later than that covered by the discs which ought to have been contemporaneous and reliable. The Committee was not left in any doubt that these incongruous findings fully supported the allegations that the transactions were linked to the fraudulent evasion of VAT. Had the Respondent put in place and carried out appropriate due diligence checks of the company supply chains in accordance with HMRC guidance, this situation could not have arisen. Accordingly, the Committee was satisfied that despite HMRC's repeated advice and alerts and also HMRC's notices and communications regarding its investigation findings, the Respondent had failed in his obligations. As a result of this failure, the Committee understood that a loss of revenue had arisen in excess of £2 million. The Committee understood that HMRC had sought and obtained a winding up order against ■■■ because it did not meet the HMRC demand for payment of a VAT charge in excess of £295,000 issued in 2013.

Allegations 6 and 7.

The Committee found it to be beyond dispute that the Respondent had been subject to the application for disqualification made against him by the Official Receiver and then disqualified for 12 years by an order of the High Court as set out in the charge.

### **Decision on 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"; or "conduct resulting in any conviction (or adverse finding by, or sanction or order of, or undertaking to, any tribunal or court or other body or authority) relevant to their membership or registration with the Institute. The CIMA Code of Ethics in each succeeding version is a subordinate document of the byelaws and a breach of the Codes of Ethics or the Byelaws is accordingly misconduct.

The Committee was advised that a Company Directors Disqualification Act Order constituted an order of a court within the meaning of 'misconduct' as defined by CIMA's Byelaws and Regulations. The Committee considered that the Respondent had a professional obligation to adhere to high standards of personal conduct and behaviour. However, CIMA, members of the public and fellow members of the profession are entitled to expect the Respondent to have upheld the fundamental principles of the code of ethics at all times. In particular, the Committee considered the fundamental principles of professional competence and due care and professional behaviour.

In respect of allegation 8, the Committee considered that the Respondent being the subject of a 12 year disqualification from being a company director was clearly in serious breach of the Codes of Ethics. He had acted disgracefully and in a way that wholly disregarded his professional obligations of due care. 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 any 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 affect the good reputation of the profession.

In respect of allegation 9, the Committee concluded that the Respondent'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, and facilitated serious fraud. The Committee concluded that the breach of the fundamental principle of professional behaviour was sufficiently serious on its own as to amount to misconduct.

### **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 an independent 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 following aggravating and mitigating factors.

Aggravating factors included that the Respondent's acts and omissions were repeated, persisted over a long period of time and resulted in a very significant financial loss of revenue to HMRC.

His conduct and behaviour were deliberate to the extent that over an extended period of time and in the face of clear advice and warnings from HMRC, he failed to take action to bring the fraud to an end.

The Respondent was a long-standing member of the profession and as a consequence his conduct and behaviour should have been an example to others.

Although the Respondent did nothing to impede the progress of these proceedings, and did not challenge the allegations or the facts, he did not demonstrate any remorse or any insight into the impact that his conduct might have on the wider profession.

The Respondent had indicated to CIMA that he did not intend to make any submission in mitigation of penalty, and he had not done so. The Committee was unable to find any element of mitigation in the facts before it.

The Committee first considered taking no action. The Committee concluded that, in view of the nature and seriousness of the Respondent's conduct and behaviour, and in the absence of a formal explanation, it would be wholly inappropriate to take no action. HMRC had been caused a significant financial loss.

The Committee then considered admonishment. The Committee noted that the indicative sanctions guidance (ISG) states:

*"an admonishment may be appropriate where the conduct is at the lower end of the spectrum..."*

The Committee concluded that the Respondent's acts and omissions could not be described as minor in nature. His conduct had persisted over an extended period of time resulting in a significant financial loss to HMRC. As a consequence, the Committee concluded that an admonishment would be inappropriate and insufficient to meet the wider public interest concerns raised by the Respondent's conduct. Furthermore, the Committee concluded that it would be insufficient to maintain public confidence in the regulatory process and to uphold the reputation of the profession.

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."*

A severe reprimand is considered "to be more severe than a reprimand."

The Committee concluded that the Respondent's conduct and behaviour were serious, and in the circumstances a reprimand or even a severe reprimand would fall significantly 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 serve no practical purpose and would not adequately address the need to uphold high standards of conduct and behaviour of members or to maintain public confidence in the profession.

The Committee, having concluded that a financial penalty would serve no practical purpose, went on to consider conditional membership. The Committee took the view that the Respondent's conduct was not amenable to conditions as the basis for the underlying conduct and behaviour appear to be attitudinal, given his persistent failure to respond to the assistance, encouragement and advice provided by HMRC. 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.

The Committee next considered a suspension order which might send a signal to the Respondent, the profession and the public reaffirming the standards expected of a member of CIMA. However, the Committee noted that there will 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 the Respondent 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.

Having determined that the suspension order did not meet the wider public interests the Committee moved on to consider expulsion and 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 case where there is no other means of protecting the public or the wider public interest. The Committee decided that the Respondent's case fell into this category because of the absence of any evidence of remorse, insight or remediation and in its view that there is an ongoing risk of continuing harm to the public. The Respondent has been disqualified as a company director for a very significant period of time. The Committee was satisfied that the Respondent's conduct and behaviour were fundamentally incompatible with continued membership. The Committee was satisfied that any lesser sanction would serve to 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 with the Respondent's interests. The Committee had regard to the impact that an expulsion order might have, but concluded that the Respondent's 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.

The Committee decided that the appropriate and proportionate order was an expulsion order with costs of £14,575.