

**Mr Abel Phiri of HM Prison, Wandsworth, formerly of Brentford, Middlesex, UK
CIMA Disciplinary Committee meeting held 21 July 2021**

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 the Respondent provides as follows:

"Factual charges

1. You are a Registered Member of the Chartered Institute of Management Accountants ("CIMA or the Institute") and your CIMA contact ID is 1-JW5X.
2. On 23 October 2020 you pleaded guilty and were convicted of the following offence ("the Offence"):

Fraud by abuse of position totalling approximately £134,000.

3. On 20 November 2020, in relation to the Offence you were sentenced to two and a half years imprisonment.
4. Your actions which led to the conviction were dishonest.

Misconduct Charges

By reason of paragraphs 1 to 4 above either individually or collectively, you are guilty of misconduct as defined by Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (2012, 2015, 2018 and 2020 versions) as follows:

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

CIMA considers your conduct which resulted in your conviction relevant to your membership as it constitutes a breach of the fundamental principles of the Code of Ethics (2015 and 2020 versions), in particular (Integrity and Professional Behaviour)

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

CIMA considers your conviction and your conduct which resulted in your 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 (January 2015 and January 2020 versions)."

Findings of Fact

The Respondent had admitted the facts of the Charge, which was supported by the certificate of conviction dated 9 March 2021. Based on the certificate and the Respondent's admissions, the Committee found the facts proved. However, and for the avoidance of doubt, the Committee also considered the relevant documents relied upon by CIMA in relation to each allegation of fact.

The Committee was satisfied that all the facts were 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 charges (set out above), the Committee made the following findings:

The facts leading to the Respondent's conviction were a clear breach of the Byelaws and Regulations and in particular the Code of Ethics which bound him as a Member of the Institute. 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.

This matter related to the Respondent's period of employment as a finance officer at Greenwich Hospital beginning in 2015. The Respondent committed a series of thefts by abusing his position of trust. Invoices were received by suppliers for services to the hospital and the Respondent was required to effect payment of them. On a number of occasions, he arranged for certain payments totalling approximately £134,000 to be made to accounts which were unrelated to the supplier. The accounts receiving the payments were held by persons connected to the Respondent.

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 Respondent's admissions in which he pleaded guilty at court and his responses to the Institute set out above. The Respondent recognised that what he was doing was illegal. He maintained that he was at that time heavily in debt as a result of being unable to find work.

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 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 submissions made by the Respondent in his correspondence in which he took full responsibility for his actions and expressed deep remorse. He had been unable to make any repayments directly as he was now serving a prison sentence of 30 months and had no access to his accounts or assets. Further, he was subject to a confiscation order process. The Respondent said that he was unable to meet the costs asked as he has no resources available to meet costs.

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

The misconduct was aggravated by the fact a large sum of money was stolen in a series of repeated thefts from a hospital over a lengthy period of time. The Respondent abused his position of trust. There was a measure of pre-planning and calculation involved.

The misconduct was mitigated by the Respondent's full admission of wrongdoing and expressions of remorse which seemed genuine. This was his first employment after leaving service in the armed forces and the Committee gave full credit for his service which included active service overseas.

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

The Committee considered that an admonishment 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 for a proportionate sanction. There remained a risk, in the Committee's view, that the Respondent might again succumb to financial pressures. 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.

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 sought assistance when he was first in financial difficulties, 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 the Respondent was under financial pressure to behave in an unethical or criminal way. The Respondent could have taken steps to seek help earlier. The Committee could not be satisfied that the Respondent would engage with conditions successfully and in any event the Committee could not devise conditions which would address the 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 the pressures identified in this case.

The Committee therefore concluded that the appropriate and proportionate sanction was one of expulsion. The Committee recognised that this might result in financial hardship for the Respondent. However, while that is important, it is outweighed by the need to protect the public and to support public trust and confidence in the profession and in the Institute as its regulator.

The Committee determined the Respondent should contribute a sum of £912.50 in costs.