

**Ms Diana May of Mount Lawley, Australia
CIMA Disciplinary Committee - 15 January 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 Ms May (the Respondent) provided as follows:

Factual Allegations

1. On 11 March 2020 you pleaded guilty and were convicted of 17 charges of stealing as a servant.
2. Those convictions relate to the stealing of approximately AUS\$95,000 between 11 May 2018 and February 2019 whilst employed by SS Pty Ltd.
3. You were sentenced for the above offences to 9 months imprisonment and fine of AUS\$500.
4. Your conduct which resulted in the conviction was dishonest."

Misconduct Allegations

By reason of the facts alleged above, either individually or collectively, it is alleged that you are guilty of misconduct as defined by the Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (July 2015, December 2018 and April 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 that your conduct which resulted in your conviction is relevant to your membership as it constitutes a breach of the fundamental principles of the Code of Ethics (January 2015 and January 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, to be 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 Institute produced to the Committee a certificate of conviction which established that the Respondent was convicted of stealing in her capacity as an employee in the Magistrates Court

of Western Australia. The Committee found that this was conclusive proof of the facts of the charge. The Respondent admitted the facts of the Charge, as set out in her declaration dated 10 November 2020. 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 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 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. This matter related to a series of thefts of company money on 17 occasions amounting to more than AUS\$95,000 committed between 11 May 2018 and February 2019 during her employment as her employer's Chief Financial Officer which began on 18 April 2017 and ended on 26 April 2019. 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 said that the Respondent knew precisely what she was doing and that she knew that she was taking the money illegally, although she understood that she would have to pay it back at some future date.

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 on 22 December 2020 in which she accepted full responsibility for her conduct and expressed her deep remorse. The Respondent explained the steps that she had taken to repay the money including selling her principal residence. The

Respondent had a long professional history without previously coming to the adverse attention of the Institute.

The Panel 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 admitted that she knew to be wrong. The profession had been brought into disrepute. The Respondent acted under personal financial pressures in an attempt to keep her own family business afloat. However, she should not have put her employer at financial risk. She was in a position of great trust and her actions had damaged the reputation of the profession. The Respondent made some gains as a result of her actions in that her renovations company was able to continue to trade because she applied the stolen funds to the business.

The misconduct was mitigated by the Respondent's seemingly genuine remorse and her cooperation with the Institute in these proceedings. She made full admissions. The Committee accepted that she acted under some financial pressure and had repaid the money that she took.

The Committee considered each sanction in increasing order of restrictiveness 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 or a proportionate sanction. There remained a risk, in the Committee's view, that the Respondent might again succumb to financial pressures 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 where there has been repayment of the sums stolen.

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 she was first in financial difficulties, but she 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 under financial pressure to behave in an unethical or criminal way. She could have taken steps to sell or liquidate her own company instead of stealing funds to finance it. The Committee could not be satisfied that she 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 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, whilst important, it was 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.

Costs

The Committee determined that Ms May should contribute a sum of £912.50 in costs.