

## PUBLISHED DECISION

### DISCIPLINARY COMMITTEE HEARING HELD ON 30th NOVEMBER 2021

Mr Nicholas Diable, formerly ACMA, CGMA and CIMA Member in Practice  
of Boschettis Steps, Gibraltar

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 Diable (the Respondent”:

#### “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-G4K5.
2. At Bonn District Court, Germany on 18 March 2020 you were found guilty of aiding and abetting tax evasion in 5 cases (‘the Offence’).
3. In relation to the Offence you were given a suspended sentence of one year 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 (2018, 2020 and 2021 versions) 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 Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations Ethics (2015 and 2020 versions), in particular (Integrity and Professional Behaviour (a)) “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, and on the basis of admissions made by the Respondent, 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. The Committee noted that in his submissions dated 18 November 2021 the Respondent admitted misconduct.

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

The Committee determined that the Respondent was a Registered Member of the Chartered Institute of Management Accountants in terms of allegation 1.

The Committee found that overall, the Respondent's failures were serious and amounted to misconduct.

The Committee determined that the Respondent's conduct involved aiding and abetting tax evasion and the actions which led to his conviction were dishonest. The Respondent had admitted dishonesty. His actions breached the fundamental principles of integrity and professional behaviour in that his actions were dishonest and would be seen by a reasonable and informed third party to adversely affect the good reputation of the profession.

The Committee determined that, having been convicted of dishonest conduct as set out in allegations 2 – 4, the Respondent was in breach of Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations in particular (Integrity and Professional Behaviour)

- (a) *conduct resulting in any conviction. relevant to their membership...with the institute.*
- (b) *"failure to comply with the Laws of the Institute"*

## 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 Panel took into account the following aggravating and mitigating factors.

Aggravating Factors:

- The Respondent's misconduct involved a criminal conviction.
- The misconduct took place over a prolonged period of time.
- The misconduct was pre-meditated.
- The misconduct caused severe detriment to CIMA's reputation.
- The misconduct involved a breach of trust.
- The misconduct involved a conspiracy with others.
- There were multiple instances of the misconduct.
- The Respondent has not demonstrated any real insight into the nature and extent of his misconduct and the effect it could have on others and the reputation of the profession and CIMA as a regulator.

- The Respondent has not shown any remediation.

Mitigating Factors:

- The Respondent self-referred himself to CIMA.
- The Respondent has admitted the allegations.

The Committee first 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 misconduct could not be described as minor in nature. The Respondent has been convicted of aiding and abetting tax evasion and received a suspended sentence of one year in prison. 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 suitable for conditions given his lack of insight and remediation. 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, in light of the Committee's conclusions about the Respondent's lack of insight into the nature and extent of his misconduct and the effect it could have on others and the reputation of the profession and CIMA as a regulator, 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 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.

Mr Diable was expelled from CIMA and ordered to pay costs of £1,825.