**PUBLISHED DECISION**

**APPEAL COMMITTEE HEARING HELD ON 14 FEBRUARY 2021**

**Mrs Ekeoma Emesinwa, formerly Registered Student, of Lagos, Nigeria**

## Background

1. A Disciplinary Committee hearing held on 13 October 2021 had determined that Mrs Emesinwa had breached:

   (i) the CIMA Exam Scheduling Terms and Conditions;
   (ii) the CIMA Non-Disclosure Agreement' and
   (iii) the [redacted] Professional and Regulatory Candidate Rules Agreement.

   In addition, her actions constituted a breach of the Fundamental Principles of the CIMA Code of Ethics (January 2020 version), in particular:
   a. Integrity (sections 110.1(a) and 111.1); and
   b. Professional Behaviour (sections 110.1(e)) and 115.1).

2. The full details of the Disciplinary hearing are appended below. The Disciplinary Committee had found Mrs Emesinwa guilty of misconduct, determined that her student registration should be cancelled and that she should contribute the sum of £1,750 in costs.

3. Mrs Emesinwa had been legally represented by Mr U at her disciplinary hearing and was again represented by him for her appeal.

## The Appeal

1. Mrs Emesinwa appealed on the following grounds:

   - There was an irregularity or unfairness in the procedure leading to the decision reached or sanction imposed.
   - The decision reached was unreasonable or the sanction inappropriate.

2. Those grounds corresponded to rules 2.1(i) and 2.1(ii) of CIMA's Appeals Procedure Notes 2015 ('the Appeals Procedure'). It was agreed by all parties that an oral hearing was not required.

3. The Appeal Form set out details of the appeal and invited the AC to overturn the finding of the DC, to remove the sanction imposed and to substitute a different sanction.

4. The parties' arguments were set out in the documents:

   - **'**Appellant's Written Submission' dated 12 January 2022;
   - 'CIMA's Submissions on Appeal' dated 21 January 2022;
   - 'Appellant's Reply to CIMA Submissions' dated 27 January 2022.

5. The AC met on 14 February 2022 to consider the appeal. It had before it documents that included an Appeal Committee bundle of 347 pages, including a transcript of the hearing before the DC. The AC also had placed before it the documents that were before the DC.

**The Appeal under r. 2.1(i) / / irregularity or unfairness in the procedure**

***The Appellant's case***

6. The Appellant argued that unfairness arose on three matters. In brief, these were –

    - the questions asked by the members of the DC had created unfairness;
    - CIMA had failed to produce (i) the entirety of the video recording, and (ii) the exam script written by the Appellant, which prevented her from adequately responding to the case;
    - In making its findings, the DC had unfairly failed to take into account its earlier self-direction that the Appellant had been deprived of the opportunity of relying on this evidence.

7. The AC's conclusions on each of the grounds of appeal are set out below. The submissions made on behalf of the Appellant are referred to in summary. However, in reaching its decision on each ground, the AC took into account all the submissions provided on behalf of the Appellant, including those made in reply.

***Unfair questions?***

8. The procedure set out under the Disciplinary Committee Rules 2020 ('the 2020 Rules') is to a significant extent inquisitorial. Rules 18(5) and 20(5) permit the questioning of the witnesses by members of the DC. Rule 12 is a further indicator of the inquisitorial aspect of the DCs procedures under the 2020 Rules. That rule confers a discretion on the DC to seek further oral or documentary evidence, subject to the advice of the legal assessor.

9. The inquisitorial aspects of the procedure reflect the DC's function, which is to investigate the case before it, subject to the principles of fairness and compliance with the relevant rules.

10. The existence of the power to question witnesses under rr. 18(5) and 20(5) of the 2020 Rules would not justify questioning that led to justifiable concerns of bias on the part of a member of a DC. However, questions that for example seek clarification of the oral evidence or to explore relevant areas of a case where there is a gap in the evidence are in principle permissible, provided that they are fairly put and relevant: see *Roylance v GMC* [1999] UKPC 16 at [12] – [17] and *Banerjee v GMC* [2017] EWCA Civ 78 at [14].

11. The AC found that the questioning was appropriate and fair. The questions asked, whether individually or cumulatively, did not indicate bias or an appearance of bias on the part of the DC members. Mrs Emesinwa's representative Mr U had not intervened during the DC hearing to object to the questions. The questioning was in nature clarificatory or with a view to establishing the facts of the case. That an aspect of the questioning (the pen) did contribute to adverse findings against the Appellant did not create unfairness as a matter of law. Therefore, this ground of appeal was rejected.

***Unfair failure to produce evidence?***

12. The AC accepted that CIMA did not withhold evidence from the DC. It was made clear at the hearing on behalf of CIMA that both additional video evidence and the answer script had been sought and that for reasons beyond CIMA's control, these were not available. The evidence was simply not available, and there was no evidence that the test centre had withheld it. The AC agreed with CIMA's submission that the Appellant had misunderstood the email referred to in paragraph 3.4 of her Written Submission, because its text showed that the email was from test centre [itself], not from Mrs O, the manager of the test centre. The AC was not satisfied that Mrs O had access to the video recordings. The video recordings were at all times under the control of the test centre and Mrs O did not have access to them. Therefore, the AC rejected this ground of appeal.

***Failure to take into account the absence of video and exam script evidence?***

13. It was argued that '*though the DC rightly found that "she had been deprived of the opportunity of relying on this evidence through no fault of her own .. vide lines 36-40 of the second page to lines 1-7 of the third page of its decision .., it nevertheless unfairly did not take this fact into consideration in its determination of the charges against the appellant*.' In referring to the absence of these two pieces of evidence, the relevant part of the decision stated as follows, -

    *The Committee took into account that* [the Appellant] *had been deprived of the opportunity of relying on this evidence through no fault of her own.*

14. The absence of further references to this matter in the subsequent parts of the decision did not justify the conclusion that the DC did not have it in mind in making the findings that it did, having stated in its decision that it had done so.

***Conclusions of the AC on grounds under rule 2.1(i)***

15. For these reasons, the AC rejected each of the grounds of appeal of alleged irregularity or unfairness advanced under r. 2.1(i) of the Appeal Procedure.

**The Appeal under r. 2.1(i) / Unreasonableness of the decision**

***The Appellant's case under r. 2.1(ii) / the decision reached was unreasonable or the sanction inappropriate***

16. The Appellant's primary case was directed at paragraphs 4 – 7 of the DC's findings of fact. In summary she argued as follows, -

    - the DC wrongly attached weight to the evidence of Mrs O in view of its conclusions that her evidence was 'unsatisfactory' in the several respects set out in the decision;

    - the DC's findings in respect of each of charges 5, 6 and 7 were based on 'conjectures, supposition and speculations' and did not meet the required standard of proof in order to find any of those charges proved.

***Unreasonableness: the standard of review***

17. The AC considered whether or not the DC had reached a reasonable decision in the circumstances. Put another way, the AC asked itself whether the decision was outside the range of reasonable decisions open to the DC (*R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin).

18. The AC also took into account the guidance in *Southall v GMC* [2010] EWCA Civ. 407 [AB/212] where Leveson LJ stated at [47], -

    …. , [I]*t is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually unassailable (see Benmax v Austin Motor Co Ltd [1955] AC 370); more recently, the test has been put that an appellant must establish that the fact-finder was plainly wrong (per Stuart-Smith LJ in National Justice Cia Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer) [1995] 1 Lloyd's Rep 455 at 458). Further, the court should only reverse a finding on the facts if it "can be shown that the findings … were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread" (per Lord Hailsham of St Marylebone LC in Libman v General Medical Council [1972] AC 217 at 221F more recently confirmed in R(Campbell) v General Medical Council [2005] 1 WLR 3488 at [23] per Judge LJ). Finally, in Gupta v General Medical Council [2002] 1 WLR 1691, Lord Rodger put the matter in this way (at [10] page 1697D):*

> *"In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position. ."*

***Did the DC wrongly accept part of the evidence of Mrs O?***

19. For the Appellant it was argued that: '*the finding of the Disciplinary Committee (DC), that the star witness of the complainant/respondent herein, Miss O* [sic] *was "unsatisfactory", "argumentative and partial and she appeared to see her role as being to prove a case against Mrs Emesinwa…" made her evidence unreliable, and the DC was wrong to attach any weight to her evidence*".

20. It was correct that the DC found Mrs O to be "unsatisfactory" as a witness, and "argumentative and partial", and that she "appeared to see her role as being to prove a case against Mrs Emesinwa". However, the DC stated in its decison that they had "approached her evidence with caution".

21. However, the DC's assessment of Mrs O

22. as a witness did not render the totality of her evidence unreliable. Even if the DC had expressly found that Mrs O was lying about certain issues (which it did not), it did not follow that the entirety of her evidence should have been rejected. As a matter of law, a factfinder can accept some aspects of a witness' evidence and reject others – even where that witness is found, in some respects, to be lying. As HHJ Williams put it in *Singh v Jhutti & Anor* [2021] EWHC 2272 (Ch) at [62], "[l]*ies in themselves do not necessarily mean that the entirety of the evidence of a witness should be rejected.'*

23. The particular aspect of Mrs O's evidence on which the DC relied, related to whether or not the Appellant had prepared the prohibited notes in question prior to entering the examination room. This went to the seriousness of the Appellant's dishonesty, rather than the question of whether she had been dishonest at all. The DC accepted Mrs O's evidence that: (i) the examination hall was closed between exams and was checked each morning, (ii) the examination hall did not contain a printer or anything else which could mean that plain paper was brought in and could potentially be left at a workstation; and (iii) that the search of the Appellant conducted by Mrs O was not a body search, did not involve any touching, and that it would have been difficult to detect a concealed sheet of paper in such a search.

24. Although Mrs O was asked in cross-examination about other candidates taking different exams, she was never asked about the Appellant's central contention that "*it is possible that the paper… could have been brought in by other persons that came to write other exams*".

25. In all the circumstances, the DC did not misdirect itself by accepting those parts of the evidence of Mrs O's evidence that it did accept. The conclusions it reached were reasonable in the circumstances.

***Were the DC's findings as to charge 5 (concealment) unreasonable?***

26. The findings of the DC in respect of charge 5 were based entirely on the video evidence. The members of the AC viewed the entirety of the video evidence that was before the DC, and were in as good a position as that committee to evaluate that evidence.

27. Although the DC noted that the quality of the video was very poor, it was sufficiently clear to show that '*most of the time there appeared to be only one sheet on the workstation because the other was directly beneath'* and that '[a]*t the moment when Mrs Emesinwa was challenged the video showed here with one hand on top of the sheet(s) in a rather unnatural way while the Exam invigilator was trying to see what was there*.'

28. Contrary to the Appellant's submission, there was no logical inconsistency between the DC's finding that '*most of the time there appeared to be only one sheet on the workstation'* and its finding that '[t]*he video showed times when Mrs Emesinwa separated the two sheets apparently to look at the concealed one*.' Both were borne out by the video evidence. For example, the timestamp showing 10:59:30, the Appellant was holding an A4 sheet, with a second sheet visible on the desk to her left. At 10:59:35, the Appellant glanced over her shoulder, placing the first sheet carefully on top of the second at 10:59:45, before sliding the top sheet upwards to ensure the bottom sheet was fully covered at 10:59:57.

29. The video evidence itself showed that the Appellant tried to keep her hand on top of her papers as the invigilator looked underneath (timestamp 11:13:10 to 11:13:30). There was nothing unreasonable in the Disciplinary Committee's observation that this was '*unnatural*' and the AC rejected the argument for the Appellant that there was nothing unnatural about the position of her hand because the space was limited.

30. For those reasons, the AC concluded that the DC's findings in respect of charge 5 were based on a reasonable interpretation of the video evidence.

***Were the DC's findings as to charge 6 ('referred to .. prohibited notes') unreasonable?***

31. The grounds on which the DC based its decision to sustain charge 6 were, (i) the video showed times when Mrs. Emesinwa separated the two sheets apparently to look at the concealed one; and (ii) the erasable note board contained a risk profile graph which appeared to have been copied from a similar graph on the prohibited notes.

32. The Appellant submitted that the video evidence did not show her '*prying at any time into the alleged concealed note*'. As to (ii), it was submitted that the DC was wrong to reject the possibility that the Appellant reproduced the risk profile graph from her memory, particularly in view of the differences that there were between the graph on the prohibited note and that on the erasable notepad. The DC's conclusion that she copied the graph was pure speculation.

33. The DC's finding in respect of charge 6 was expressly based on the video evidence and the content of the Appellant's notes. The contention that the DC's finding was not based on the evidence was incorrect. The sequence of events at timestamp 10:59:30 showed that the Appellant did look at or 'pry into' the concealed note.

34. The reproduction of the risk profile graph on the Appellant's erasable noteboard was also sufficient evidence in the circumstances to ground the finding that the Appellant referred to her notes during the examination.

35. For those reasons, the AC ha concluded that the DC's findings in respect of charge 6 were based on a reasonable interpretation of the evidence before it.

***Were the DC's findings as to charge 7 (dishonesty) unreasonable?***

36. In brief, the Appellant's submissions were as follows, -

    - the DC had wrongly relied on its erroneous conclusions as to charges 4, 5 and 6;
    - the DC had wrongly rejected the Appellant's evidence that she found a plain sheet of paper at the exam station on which she made some jottings and attempted to hand in before the exam started to the test centre administrator, who CIMA did not call to give evidence;
    - there were other good reasons why a sheet of plain paper could have been in the exam room in view of the evidence before the DC;
    - the DC impermissibly took into account the state of the note, to conclude that it had been folded by the Appellant in order to conceal it and bring it into the exam room.

37. The AC's conclusion was as follows. For the reasons set out above, the Appellant's challenge to the findings on charges 5 and 6 were not made out. Therefore, this criticism of the findings on charge 7 did not succeed.

38. The Appellant's attack on ground 4 was in large part based on the finding in the decision on charge 7 that she had brought the prohibited note into the exam hall. She argued that there was every reason why a sheet of plain paper might be in the hall, as she said it was; and the DC should have accepted her evidence that she attempted to hand in the piece of paper on which she made some jottings.

39. Charge 7 alleged that the Appellant's actions were dishonest. Contrary to the Appellant's assertions, the DC's finding that she intended to cheat was the necessary result of its findings on Charges 4 - 6.

40. The DC's finding that the Appellant had prepared the notes in question in advance was based on its assessment of the witness evidence, to which due deference must be given by the AC in view of the principles set out in *Southall v GMC* at [47]. The DC was entitled to reject the evidence of the Appellant that she sought to hand her notes to an invigilator. That finding was based on the DC's assessment of the witness evidence, including that of Mrs O to whom the point was put.

41. The AC did not accept the Appellant's submissions as to whether or not there was paper on her desk at the start of the exam. The evidence before the DC in support of this contention was her own. The DC chose to reject it and to prefer the evidence of Ms O that the hall was closed between exams and checked each morning, that the hall did not contain a printer or anything else which could mean that plain paper was brought in.

42. The Appellant criticised the DC over its approach to the folded nature of the piece of paper. However, the submission did not refer to the DC's expressed caution about '*drawing inferences from a photocopy*'.

43. For these reasons, the AC rejected each of the submissions made on behalf of the Appellant and concluded that the findings of the DC in respect of charge 7 were reasonable in view of the evidence.

***Conclusions on unreasonableness of the decision***

44. Therefore, the AC rejected each of the grounds of appeal concerning charges 4 – 7 of the decision.

**The decision as to sanction**

45. The Appellant submitted that '*the sanction and cost [sic] imposed on the appellant ranks as one of the most draconian sanctions ever to be imposed on any violator in the annals of CIMA.*'

46. In advancing this criticism, it appeared that the Appellant had considered outcomes before the Investigation Committee and not those before the DC, as shown by the Annexure to Indicative Sanction Guidance, February 2021. The outcomes before the DC in relation to this type of case ('Use of Unfair Methods Whilst Sitting a CIMA Examination') show numerous instances where a direction has been made for cancellation of a student's registration in similar circumstances.

47. In those cases in which the student's registration was not cancelled, two involved a prompt admission and apology, which the Appellant did not offer, and two involved a finding that the student did not use or refer to the notes in question, which also did not apply to this case.

48. Therefore, the AC concluded that this ground of appeal had failed.

**Costs before the DC**

1. The decision on costs was considered by the AC [Appellant's personal circumstances have been redacted].

2. The AC concluded that the decision was reasonable in the circumstances. This ground of appeal therefore failed.

**Costs of the appeal**

3. The AC made an award of costs (additional to the existing DC costs) in the sum of £500 against the Appellant and in favour of CIMA.

**PUBLISHED DECISION**

**DISCIPLINARY COMMITTEE HEARING HELD ON 13 OCTOBER 2021**

**Mrs Ekeoma Emesinwa, formerly Registered Student, of Lagos, Nigeria**

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 Charges**

The Charges against Mrs Emesinwa (the Respondent) were as follows:

"Factual Allegations

1. You are a registered student of CIMA.
2. On 22 May 2020, you sat the CIMA Management Case Study Examination (the Exam).
3. You agreed to adhere to the following rules applicable to the Exam:
   a. The CIMA Exam Scheduling Terms and Conditions;
   b. The CIMA Non-Disclosure Agreement; and
   c. The [redacted] Professional and Regulatory Candidate Rules Agreement.
4. You had prohibited notes in your possession in the examination room during the Exam.
5. You concealed those prohibited notes from the Exam invigilators.
6. You referred to those prohibited notes during the Exam.
7. Your actions as set out in paragraphs 4 to 6 were dishonest.

**Misconduct Allegations**

By reason of the facts alleged above, it is alleged that you are guilty of misconduct as defined by Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (April 2020 version). In particular you have failed to comply with the Laws of the Institute as follows:

8. You breached the CIMA Exam Scheduling Terms and Conditions.
9. You breached the CIMA Non-Disclosure Agreement.
10. You breached the [redacted] Professional and Regulatory Candidate Rules Agreement.

11. In addition, your actions constitute a breach of the Fundamental Principles of the CIMA Code of Ethics (January 2020 version), in particular:

    a. Integrity (sections 110.1(a) and 111.1); and
    b. Professional Behaviour (sections 110.1(e)) and 115.1)."

**Stage 1 – Decision on Facts**

Mrs Emesinwa admitted charges 1 to 3 in her written response and at the hearing. The remaining charges were denied.

It was not in dispute that Mrs Emesinwa attended the [redacted] examination centre in Lagos (Nigeria) on 22 May 2020 to take the CIMA Management Case Study Examination. The venue was a [redacted] authorised test centre for computer-based exams conducted by [redacted] on behalf of various organisations. The precise times when Mrs Emesinwa arrived at the centre, when she entered the hall and when the Exam started were in dispute, but it was agreed that she attended the morning session. The examination hall had capacity for about ten candidates and was at or near capacity but Mrs Emesinwa was the only candidate for the CIMA Management Case Study exam.

The Exam was computer-based. Students were not allowed any writing materials at the workstation except an A4 'erasable noteboard', which was a white laminated sheet on which they could write with a wipeable marker pen. The noteboard and pen were provided by the exam centre. During the Exam, at about 11:13am, it was discovered that Mrs Emesinwa had an A4 sheet of paper at her workstation as well as the erasable noteboard. This was closely written on both sides with what appeared to be notes. She was told to leave the exam hall.

Mrs Emesinwa's case was that the Exam had been due to start at 09:00. She entered the exam hall at that time, having been searched for unauthorised items and was assigned workstation number 5. She claimed that she found a blank sheet of A4 paper upon her arrival at this workstation. She further claimed that because of technical problems, the start of the Exam was delayed to about 10:00 a.m. She 'used the time to engage in a brain exercise by scribbling on the plain sheet of paper, whatever came into her head and [had] nothing to do with the exam, just to while away time and kill boredom before the Exam was to commence'. Once the Exam started, she was not able to leave the workstation to dispose of the paper. She claimed that she tried to hand the sheet of paper to one of the test administrators 'but he declined' so she left it on the desk during the Exam. She said that she had not brought the sheet of paper into the hall, she had no intention to cheat in the Exam, she had left the sheet openly on her desk without trying to conceal it, she never referred to it, and in any case the notes written on the sheet did not relate to the CIMA Exam.

The Committee heard oral evidence from Mrs O, the manager of the test centre, Ms F, a CIMA employee in the UK, and Mrs Emesinwa. The Committee was provided with about a hundred pages of written evidence but only a few of these documents were generated during the Exam. These were copies of a signing-in sheet, the authorised laminated sheet (the erasable noteboard) with notes written on it, the unauthorised A4 sheet of paper with notes written on it and three clips from the CCTV recording taken during the Exam. The Exam was conducted under video surveillance and there was a camera close to Mrs Emesinwa's workstation. The Committee was told that the whole Exam was videoed but for a reason that was not explained [redacted] had only been able to produce these three clips covering the period from 10:21 a.m to 11:14 a.m (assuming the clock on the camera was accurate). The videos did not show the start of the Exam but they did show the sheet of paper being discovered and Mrs Emesinwa's actions immediately before this happened.

Another piece of evidence which was not before the Committee was the answers submitted by Mrs Emesinwa in the Exam. The Committee was told, and accepted, that CIMA had tried to obtain this from [redacted] but was told that the computer files from the uncompleted Exam were no longer available. Mrs Emesinwa's case was that these answers would have shown that she had not used the unauthorised

notes when submitting her answers. The Committee took into account that she had been deprived of the opportunity of relying on this evidence through no fault of her own.

Ms F's evidence was mainly concerned with process. The Committee accepted it entirely. On the other hand Mrs O and Mrs Emesinwa were directly involved with the crucial events. Mrs O had checked Mrs Emesinwa in before entering the exam hall and she had also raised the alert when she had spotted on the video feed what looked like an unauthorised sheet of paper at the workstation. The Committee found both of these witnesses to be unsatisfactory. Mrs O was argumentative and partial. She appeared to see her role as being to prove a case against Mrs Emesinwa. The Committee approached her evidence with caution. Mrs Emesinwa's account was simply incredible at times. For example, she was asked what pen she had used to write with on the plain A4 sheet. She said she had found a ball pen there. This was the first time she had stated that a pen had been left at the workstation.

**Charges 1 to 3**. These were admitted and found proved.

**Charge 4**. There was no dispute that Mrs Emesinwa had a sheet of paper covered with writing in her possession during the Exam. As to Mrs Emesinwa's claim that the handwritten notes were unrelated to the Exam, the Committee considered that it was not credible that an exam candidate in the minutes before an exam started would be thinking, or making notes about, some unrelated academic topic. They could clearly be described as notes but CIMA's case was that they were notes relating to the subject of the Exam, which was a "closed book" exam. The case study concerned a fictitious company called Alpaca Hotel Group, information about which was published before the Exam as 'pre-seen material'. Mrs Emesinwa claimed that the document was not relevant, but the Committee was satisfied that it was. For example, Mrs Emesinwa's handwritten notes on the A4 piece of paper included references to Alpaca and its aim to be the largest luxury hotel operator in its sector, along with details of Alpaca's senior management team. The Committee also noted a risk profile graph that Mrs Emesinwa had written on the A4 piece of paper and reproduced on the erasable noteboard and considered this to be evidence that she had used the handwritten paper notes during the Exam. The Committee was satisfied that the exam regulations referred to in charge 3 prohibited the possession of these notes.

The Committee found charge 4 proved.

**Charge 5**. The quality of the video evidence was very poor but the camera was close to the workstation and the video was clear enough that most of the time there appeared to be only one sheet on the workstation because the other was directly beneath. At the moment when Mrs Emesinwa was challenged the video showed her with one hand on top of the sheet(s) in a rather unnatural way while the Exam invigilator was trying to see what was there. The Committee also took the view that if the unauthorised sheet had been in plain view it would have been spotted much sooner.

The Committee found charge 5 proved.

**Charge 6**. The video showed times when Mrs Emesinwa separated the two sheets apparently to look at the concealed one. Also, as stated in addressing Charge 4 above the erasable noteboard contained a risk profile graph which appeared to have been copied from a similar graph on the prohibited notes.

The Committee found charge 6 proved.

**Charge 7**. Having found that Mrs Emesinwa had unauthorised notes relevant to the Exam in her possession and had consulted them, the Committee was satisfied, on the balance of probabilities, that she had cheated or intended to cheat. This was dishonest but would perhaps have been at the lower end of the scale of seriousness if she had merely taken advantage of happening to find paper and pen left by mistake at the workstation. The charges did not directly allege that Mrs Emesinwa had brought the notes into the examination hall, but CIMA's case was that there was no paper left at the workstation before the exam. Whether or not Mrs Emesinwa had prepared the notes before the exam was highly relevant to the seriousness of the case. The Committee was satisfied on the balance of probabilities that she had prepared the notes in advance. It was essential to the conduct of this Exam that no items should be

available at the workstation apart from the computer, erasable noteboard and noteboard pen. The Committee would expect a test centre to be scrupulous about this and Mrs O gave evidence that the hall was closed between exams and checked each morning. She also gave evidence that the hall did not contain a printer or anything else which could mean that plain paper was brought in and could potentially be left at a workstation.

The Committee accepted her evidence on these points. The obvious explanation for the presence of a sheet of paper at the workstation was that the candidate had brought it in. From the copy, the paper appeared to show fold marks suggesting that it might have been folded for concealment, but the original was not produced so the Committee was cautious about drawing inferences from a photocopy. Mrs Emesinwa relied on the fact that she had been searched before being allowed to enter the hall but Mrs O stated that it was not a body search and that there was no touching. It would have been difficult to detect a concealed sheet of paper in such a search. The Committee accepted Mrs O's evidence in respect of this point. Mrs Emesinwa's claim that a test administrator had 'declined' to take the sheet of paper from her before the exam was incredible. Her statement under questioning that she had also found a ball point pen at the workstation added to the unlikelihood of her account being true. The Committee was satisfied that Mrs Emesinwa intended to cheat in the exam and had no doubt that this amounted to dishonesty.

The Committee found charge 7 proved.

**Stage 2 – 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.

Charges 4 to 6 amounted to breaches of the Laws of the Institute and therefore constituted misconduct under the above definition. Charge 7 constitutes a breach of the Fundamental Principles of the CIMA Code of Ethics as set out in charge 11.

The Committee therefore found that Mrs Emesinwa was guilty of misconduct.

**Stage 3 - 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 following aggravating and mitigating factors. In mitigation, Mrs Emesinwa was, it was stated, of previous good character and this appeared to be an isolated incident. She had cooperated with the investigation.

Aggravating factors included the dishonesty and severe detriment to CIMA's reputation.

Although in his final remarks Mrs Emesinwa's representative submitted that she was 'contrite' and would not repeat her offence, the Committee did not credit her with any insight or remorse. She had consistently denied any wrongdoing and had invented a fantastic story to try to conceal her actions.

In view of the dishonesty, the Committee was satisfied that it was necessary to impose a sanction. It first considered the sanction of admonishment and then reprimand but it was satisfied that these sanctions were not sufficient to mark the seriousness of this case. The next sanction was severe reprimand, but again it was not sufficient for this case involving dishonesty. A Committee can combine a severe reprimand with a fine of up to £2,000 to increase its force but this would still leave Mrs Emesinwa free to

continue her studies when she had shown no sign of understanding the seriousness of her misconduct or having repented of it. This would not be a sufficient sanction.

The Committee considered conditional student registration, but it did not consider that there were any conditions which could address the misconduct on this case in the absence of any insight or remorse.

The final available sanction was cancellation of student registration. The Committee was satisfied that this was the minimum sanction it could properly impose to uphold the public interest. Exam cheating is amongst the most serious types of misconduct that a student can commit. It undermines the system of qualification, which is the basis of professional regulation, is unfair and demoralising to other students and severely damages CIMA's reputation and that of the profession more widely.

The Committee determined to cancel Mrs Emesinwa's student registration and impose costs of £1,750.