The Appeal Committee of the Chartered Institute Of Management Accountants
12th June 2019

Appeal by Mr Fanla Agboola of London SW9, UK

The Appeal Committee rejected an appeal from Mr Agboola against a CIMA Disciplinary Committee decision made on 29 January 2019.

Costs associated with the appeal hearing of £2,835 were added to the original costs awarded against Mr Agboola.

The record of the hearing is below, followed by the original Disciplinary Committee decision.

The Appeal Hearing

1. Mr Agboola appealed against the findings of the DC on the grounds that the decision was unreasonable or the sanction inappropriate.

2. In a letter dated 4 June 2019, Mr Agboola argued that the Disciplinary Committee's findings of fact were wrong and its conclusion erroneous. He denied that he ever made an admission to the charge and asserted that the decision to exclude him from membership was disproportionate. He said:

   "It is submitted that the decision reached by the Disciplinary Committee (the DC) on 29 January 2019 (the Decision) was based on wrong facts and erroneous conclusions. DC's decision was based on charges which DC arrived at on the basis of its own wrong interpretation of the offence CIMA erroneously assumed I have committed. The offence on which the decision was based was not committed by me. The sanction imposed, was based on the offence that I have not admitted and which has not been proved. DC's wrong decision was disproportional to even the wrong offence which CIMA assumed I have committed and admitted, too punitive, unreasonable, inappropriate and failed to follow CIMA'S Legal Assessor's Advice.

   The Chairman of the Appeal Committee tried hard but did not succeed in preventing me from lodging an appeal against the punitive, unreasonable, inappropriate and disproportional sanction imposed based on the offence I neither commit nor admit. CIMA's witness statement claimed that I merely ticked a box on the appeal form and provided no argument in support of my appeal. What was I to do when all I did was

to comply with the instructions as shown on the form and I was denied the opportunity of an extension and had no time to even ask questions? Sixteen (16) out of thirty (30) pages of CIMA' s representations bundle has no substance other than definitions of '"unreasonable" and "appropriateness" copied from Black's Law Dictionary, Tenth Edition. With CIMA's 100 years existence why was it difficult for the DC to justify her action against me with only 42 years as CIMA's student and member. The answer is simple: the offence on which CIMA based her decision against me is unreal, assumed and not proved.

For the avoidance of doubt and at the expense of repeating the details previously supplied, documents showing the real facts of this case will be attached to this submission as Appendices."

3. Under the title "The Real facts". Mr Agboola stated:

"I am a partner of Fanla & Co a business which offers accountancy services. Fanla & Co acted for Mr Da Silva as authorised agents and provided services of book keeping, accounts preparation, tax return submission and tax consultant (during HM Revenue & Customs investigation of Mr Da Silva's business). Total charges for the services rendered to Mr Da Silva for a full year was on the Bill (Attached as Appendix A) dated 15 August 2017. The Bill for £1800, to date, has not been paid by Mr Da Silva. Following the receipt of a repayment of £10192.99 in March 2018, a message (Appendix B) was sent to apologise for the delay and confirm balance due to Mr Da Silva as £8392.99

Mr Da Silva reported the firm (Fanla & Co) to ACCA, CIMA; Police and Court. The police and ACCA accepted the explanations offered for the delay in paying Mr Da Silva (i.e. that the issue was a business transaction between the firm and the client, that part of the £10192.99 received was used by the firm temporarily to save the business of another client with the hope of repayment within a short period and that the firm would pay Mr Da Silva within a reasonable time). The Court's representative visited the firm premises, accepted the explanations provided for the delay and agreed a repayment plan to repay Mr Da Silva's money through the Court Enforcement Agents. CIMA made a mess of the whole issue from the start. CIMA turned a business transaction to a personal issue of Mr Agboola (my self) and took the actions as detailed in paragraphs 6 to 26 (pages 1 to 4) of CIMA's Written Submissions.

From the attached Appendices C and D the enforcement agents showed that £11344.47 was due to Mr Da Silva. The Appendices also confirmed that £11290.93 was paid to Mr Da Silva. £11344.47 less £11290.93 leaves £53.54 shown as Current Balance on the Appendices C and D. I was informed by the enforcement agents that

the £53.54 was a special charge payable by Mr Da Silva. It is also important to note that money paid to Mr Da Silva included the reimbursement of his costs and accrued interests to cover the period he was denied the usage of his funds.

Because my Institute was determined to find reasons to crucify me personally, no attention was paid to the fact that Mr Da Silva received more money than he asked for (although I took the pain to emphasise this fact in the attached Appendix E) with only casual remark in paragraph 5 of CIMA's Written Statement that 'nearly all of the debt repaid by January 2019'.

Based on incomplete facts and wrong assumptions that because I have written to apologise for delaying payment of Mr Da Silva's money DC jumped to the erroneous conclusion that I must be hugely punished for 'incompetency' and 'misconduct'. DC pronounced the decision of' 'guilty as charged'. DC received legal advice that, if the 'offences' are proved (which I am sure is not the case) any sanction must be proportionate as well as in ascending order. DC went contrary to its own legal adviser, failed to prove my alleged offences and awarded the maximum punishment to me, a member of the Institute with no prior records for 42 years!

The decision papers delivered on paper was returned to the Institute. I complained and requested for extension of time to seek advice and appeal against the injustice do to me. Appendice F confirms the response I received. The response was an attempt to deny me of the opportunity to challenge the punitive, inappropriate, unreasonable and unlawful decision to make me an outlaw from the profession that I have been part of for 42 years. Somehow, I succeed at lodging an appeal at the last minute and it is clear, from the 16 pages used to define 'unreasonableness' and 'inappropriateness' as well as the Associate Provincial Picture Houses v Wednesbury Corp case quoted which bears no resemblance to my issue, that my Institute is unhappy that I will have the opportunity to defend my honour."

4. Mr Agboola concluded by stating:

"In several messages to Mr Da Silva and my Institute, I have apologised, on behalf of Fanla & Co (please see Appendix E again) for my part in the delay in repaying Mr Da Silva's money. I have also written to appeal to my Institute to be magnanimous and lenient in dealing with this issue. DC has erroneously deduced that my pleadings are admissions of guilt, incompetency and misconduct. This deduction is NOT right and unacceptable to me. I chose to be a member of CIMA in 1976 after graduating from another professional body - The Chartered Institute of Secretaries & Administrators (ICSA). I was a student for only 1 year, until May 1977 when I completed CIMA's final exams. For 42 years, (1977 to 2019) of my association and continuous membership, I have done my part in showing how good CIMA

accountants can be. My services (public and private) and mentorship to numerous persons of high calibre as of today will enable me produce letters of support in thousands, if need be.

I was 65 last October. It has been my wish to retire but I did not want to do so until this case is settled and my name cleared. I do not intend to renew my Practicing Licence when it expires in December this year. I am not a danger to the public as stated in the decision. Those who are close to me will confirm that I have always been (and hope to continue to be) a source of aspiration to others.

I am not rich financially (because I use what I have to help others in need) but I have personal satisfaction on what I have achieved in life. On the issue of cost, I presently have no means of making any payment towards CIMA's costs. It is not my desire to request CIMA to reimburse my costs either - if I am not denied my right to remain on CIMA's register.

I hereby, again request for forgiveness if I have not worked in your ways and you consider that I have wandered away from your laws.

Please give mercy and quench the decision of my expulsion from the Institute I love so much and have served diligently to the best of my ability."

5. In his oral submissions to the Panel, Mr Agboola expanded upon these grounds. He accepted that he had admitted the facts charged and said he did not in fact dispute them, but argued that they did not amount to misconduct. He said the finding of misconduct was unreasonable because it was the firm who had committed the offence and not him. He said the firm was separately regulated by the Association of Chartered Certified Accountants and it was wrong, therefore, of the DC to have found that he personally was responsible.

6. In relation to sanction, Mr Agboola said he believed the sanction was inappropriate because it was too punitive. He said it was a *"punishment of the highest order"* and it was wrong to expel a member who has not committed an offence in 42 years. Mr Agboola said the Legal Assessor at the meeting advised the DC that it should look at the lowest sanction to the highest. He said expulsion is the highest and that was unreasonable for someone who has not committed an offence before.

7. Mr Agboola said he had been a law abiding citizen for a very long time. He chose to be regulated by CIMA over other qualifications that he holds because he has a love of CIMA. He said he had reached retirement age and had *"nothing to lose"*, but he pleaded to the Committee to allow him to reman as a member. He said he did not want to lose "what I have worked for my entire life."

The Committee's Decision

8. The Panel considered Mr Agboola's submissions with care and took into account the submissions provided by CIMA and also the contents of the bundle of papers provided. The Panel accepted the advice of the Legal Assessor and in particular noted that it was not hearing the matter afresh, but rather was deciding whether, in all the circumstances at the time, the DC reached a decision which was unreasonable or that the sanction was inappropriate.

9. The Panel noted that, on 29 October 2018 Mr Agboola requested that his case be considered on the papers alone, without the need for an oral hearing. The Panel also noted that, notwithstanding Mr Agboola's claim in his written submissions that he did not admit anything, the DC found the charge proved based on the content of the Rule 4(2) form, which Mr Agboola completed, signed and dated 22 November 2018. In that form he put a tick by all elements of the charge alleged against him. The DC had also been satisfied that the documentary evidence supported the facts alleged. In his oral submissions to the Committee, Mr Agboola accepted that he was not in fact challenging the findings of fact in this case, but that it was the firm that was responsible and not him.

10. On 5 December 2018, Mr Agboola was informed by email that the DC Chair had agreed for the matter to be heard on the papers alone without an oral hearing. He was given the opportunity to change his mind, but did not do so. He was also given until 16 January 2019 to submit any written representations that he wished to be put before the DC. He was sent several reminders before finally, on 16 January 2019, providing some written representations for the DC to consider. Those representations included the Financial Statement showing what monies had been paid to the client and an email from Fanla & Co to the client giving the breakdown of what had been paid. All this had been seen by the DC when reaching its decisions on the facts, misconduct and sanction.

11. The Panel was satisfied that the DC had followed the appropriate and correct procedure in finding the matters found proved based on Mr Agboola's admissions in the Rule 4(2) form, together with the supporting documentary evidence. For the avoidance of doubt, this was a perfectly reasonable decision for the DC to have made in the circumstances and the Panel therefore rejected Mr Agboola's written assertion that the DC had been wrong to find the facts proved.

12. The Panel noted Mr Agboola's assertion that it was the firm and not him that was responsible for the delay in repaying the funds. However, the Panel was clear that he is governed by CIMA's Rules, Regulations and Code of Conduct and he was the person dealing with the client and a partner in the firm.

13. There followed nothing in the DC's decision on misconduct that could be considered unreasonable. On the basis of the facts found proved, the DC found that Mr Agboola had been in breach of the fundamental principle of Professional Competence and due care, as defined in section 100.5(c) of the Code of Ethics. He had also been in breach of the fundamental principle of Professional Behaviour, as defined in section 100.5(e) of the Code of Ethics. Mr Agboola had made a conscious and deliberate decision not to pay money due to a client. It was not a mistake or oversight and fell far short of what is expected of a member of CIMA. The Committee was satisfied that other members of the profession would find such behaviour deplorable. It fell into a very serious bracket, as reflected by the decision made by the DC. In the circumstances the Panel was satisfied that by concluding that Mr Agboola's conduct brought the profession into disrepute, had the potential to undermine trust and confidence in the profession as a whole, and amounted to misconduct, the DC had made a reasoned and reasonable decision.

14. The Panel noted that, notwithstanding the assertions made by Mr Agboola, the DC, in reaching its decision on sanction, had followed the correct process of considering each sanction in order of seriousness before deciding the appropriate sanction in this case. It had considered the aggravating and mitigating factors, it had had regard to the principle of proportionality and the impact such a sanction would have on Mr Agboola. In doing so, the Disciplinary Committee reached a decision which the Appeal Committee considered to be both reasonable and appropriate. Mr Agboola had made a deliberate decision to delay paying Mr Da Silva money due to him and demonstrated a complete lack of insight into the seriousness of this conduct. In fact he appeared to be normalising the approach taken in relation to client funds. The Committee noted that the DC had not included Mr Agboola's previous unblemished character as a mitigating factor and it should have. However, the Committee did not believe this omission would have altered the decision reached, nor did it diminish the seriousness of his conduct. The Committee, therefore, found the sanction of expulsion to have been appropriate.

15. Mr Agboola's appeal was therefore rejected.

Costs of the Hearing

16. The Appeal Committee has a discretion under paragraph 10 of the Appeal Committee Notes to direct that the costs of an unsuccessful appeal should be borne by the Appellant. The Bundle included CIMA's Costs for the appeal, in the sum of £2,835.00.

17. Mr Agboola informed the Panel that he did not have the means to pay the costs and he could not ask the firm to pay the costs. He said he had to borrow money to pay Mr Da Silva and he

owed money *“left, right and centre.”* Mr Agboola did not provide any current documentary evidence in support of his stated impecuniosity.

18. The Panel considered the costs requested and considered them to be legitimate and reasonable. The Panel noted Mr Agboola’s claim that he was in debt and unable to pay the costs. However, he had provided no evidence in support of this and the Panel considered it would be wrong for other members to have to effectively cover the cost of his unsuccessful appeal. The Panel therefore ordered that the costs of £2,835 should be paid in full.

CIMA Disciplinary Committee - 29 January 2019
Mr Fanla Agboola of London SW9, UK

References in this decision to Regulations are to those in the Institute's Royal Charter, Byelaws and Regulations (2015) and references to Rules are to the Institute's Disciplinary Committee Rules 2015, in both cases unless otherwise stated.

The Charge

1. Mr Agboola was a registered Fellow with the Chartered Institute of Management Accountants ('CIMA').
2. He was a partner of Fanla & Co ('Fanla') and offer accountancy and consultancy services.
3. In or around March 2018, Fanla & Co, as authorised agents for Mr D, received a repayment of £10,192.99 from HMRC.
4. Mr Agboola had made no payment to Mr D and he therefore took enforcement action against him to obtain repayment of the debt.
5. Following the enforcement action taken he agreed to pay a weekly sum to repay the debt. The first payment was made on 14 September 2018 and as at 19 November 2018 £6,500 had been repaid.

By reason of the facts alleged above, it was alleged that he was guilty of misconduct as defined by Byelaw 1 of the Institute's Royal Charter Byelaws and Regulations (July 2015 version). He had failed to comply with the Laws of the Institute by breaching the fundamental principles of the Code of Ethics (January 2015 version), in particular the principle of Professional Competence and Due Care – (Sections 100.5 (c) and 130) and Professional Behavior (Sections 100.5 (e) and 150).

Findings of Fact

1. Mr Agboola (the Respondent) admitted the facts of the Charge, as set out in his signed Rule 4(2) application form dated 22 November 2018. On the basis of admissions made by the Respondent, the Committee found the facts proved. In reaching this conclusion the Committee also took into account the relevant documents relied upon by CIMA in relation to each allegation of fact.

2. The Committee was satisfied that all the facts found proved by reason of the Respondent's admission are supported by the documentary evidence.

Misconduct

3. The Committee, having found the facts proved, went on to consider the matter of misconduct. The Committee noted that 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

Preface to the Code of Ethics explicitly states that it has been adopted by the Institute and includes the following Note: "*The CIMA Code of Ethics is a Law of the Institute (to which all members and registered students are required to comply) for the purpose of the definition of "misconduct" in Byelaw 1.*" Accordingly, a breach of the Code of Ethics constitutes a failure to comply with the Laws of the Institute and can, therefore, amount to misconduct.

4. The Respondent had a professional obligation to observe high standards of personal conduct and behaviour. CIMA, members of the public and fellow members of the profession are entitled to expect the Respondent to uphold the fundamental principles of the Code of Ethics, at all times. The Committee was aware that breach of the Byelaws alone does not necessarily constitute misconduct. In particular the Committee considered the Fundamental Principles of Professional Competence and Due Care and Professional Behaviour.

Professional Competence and Due Care

5. Section 100.5(c) of the Code of Ethics defines the fundamental principle of Professional Competence and due care as follows:

   "*Professional Competence and Due Care – maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technique and professional standards*."

6. The Respondent failed to forward the repayment of £10,192.99 to Mr D. Mr D was required to take enforcement action against the Respondent in order to obtain repayment of the money owed. The Committee was satisfied that the Respondent's failings were serious amounted to a significant breach of the principle of professional competence and due care.

Professional Behaviour

7. Section 100.5(e) of the Code of Ethics defines the fundamental principle of Professional Behavior as follows:

   "Professional Behavior – to comply with relevant laws and regulations and avoid any action that discredits the profession."

8. The Committee was satisfied that the Respondent's acts and omissions brought the profession into disrepute and had the potential to undermine trust and confidence in the profession as a whole.

9. In these circumstances, the Committee concluded that the Respondent's conduct and behaviour fell below the standards expected of a registered member and was sufficiently serious to be characterised as misconduct.

Mitigation and Sanction

10. Having found misconduct as alleged, the Committee went on to consider the issues of mitigation and sanction. In considering what sanction, if any, to impose the Committee had regard to the ISG and 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.

11. The Committee identified the following aggravating factors:

- The Respondent's acts and omissions represented a breach of trust and resulted in personal gain;
- The Respondent's failure to return the payment to Mr D was deliberate and planned;
- Despite the Respondent's assertion that he has repaid Mr D in full, the documentary evidence indicates that as of 16 January 2019, there was an outstanding balance of £53.54. There was no documentary evidence that Mr D had been paid in full;
- The Respondent was a Fellow of the Institute and as a senior member of the profession his conduct and behaviour was an example to others;
- The Respondent did not return the payment to Mr D in a timely manner and had to instruct enforcement agents;
- The Respondent had not provided any explanation for withholding Mr D's money and had demonstrated no insight into the seriousness of his conduct and the impact on his professional standing and the wider profession.
- The Respondent's apology, as set out in his written submission, lacked depth and in the absence of a detailed explanation was not accepted as genuine.
- The Respondent's engagement with the regulatory process had been sporadic.

12. The only mitigating factor the Committee was able to identify was the Respondent's admission.

13. 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 exceptional circumstances, it would be wholly inappropriate to take no action.

14. The Committee then considered an Admonishment. The Panel noted that the ISG states:

'*An admonishment may be appropriate where the conduct is at the lower end of the spectrum…'*

15. The Committee concluded that the Respondent's acts and omissions, although isolated and limited, could not be described as minor in nature and in the absence of any insight there is an ongoing risk of repetition. As a consequence, the Committee concluded that an Admonishment would be wholly inappropriate and insufficient to meet the wider public interest concerns raised by the Registrant's conduct. Furthermore, the Committee concluded that it would be insufficient to maintain public confidence in the regulatory process and uphold the reputation of the profession.

16. 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.'*

17. A Severe Reprimand is considered '*to be more severe than a Reprimand*.'

18. The Committee concluded that the Respondent's conduct and behavior was serious and in these circumstances a Reprimand or even a Severe Reprimand would fall well short of meeting the wider public interest in terms of declaring and upholding proper standards or maintaining public confidence in the profession.

19. The Committee, having concluded that a financial penalty would serve no useful purpose, went on to consider Conditional Membership. The Committee took the view that the Respondent's conduct is not amenable to conditions as the basis for the underlying conduct and behaviour is an attitudinal failing. 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.

20. The Panel next considered a Suspension Order. A Suspension Order would send a signal to the Respondent, the profession and the public re-affirming the standards expected of a member of CIMA. However, the Committee noted that there would 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 was either willing or 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.

21. Having determined that a Suspension Order did not meet the wider public interest the Committee 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 cases where there is no other means of protecting the public or the wider public interest. The Committee decided that the Respondent's case falls into this category because in the absence of insight and remediation there is an ongoing risk of harm to members of the public. The Committee acknowledged that Mr D suffered financial loss for a significant period of time and concluded that the Respondent's conduct and behaviour was fundamentally incompatible with continued membership. The Committee was also satisfied that any lesser sanction would 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 against the Respondent's interests. The Committee had regard to the impact an Expulsion Order would have on the Respondent, but concluded that his 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.

22. The Panel decided that the appropriate and proportionate order was an Expulsion Order.

Costs

23. The Committee considered CIMA's application for costs as set out in the schedule of estimated costs served on the Respondent on 17 December 2018.

24. The Committee also considered the responses from the Respondent in relation to his financial difficulties and his inability to pay a costs order. The Committee took into account the documentary evidence provided by the Respondent with regard to his financial means.

25. The Committee decided that it is appropriate to make an award for costs. The Committee determined that the Respondent should be required to make a contribution of £1,825.00 towards CIMA's costs, otherwise the costs of bringing these proceedings would have to be borne by the profession as a whole.