Mr Jince Janardanan of Mumbai, India
CIMA Appeal Committee hearing held 20 May and 12 July 2019

SUMMARY OF DECISION: APPEAL REJECTED

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1. References in this decision to Regulations are to those in the Institute's Royal Charter, Byelaws and Regulations (reprint July 2018) and references to Rules are to the Institute's Disciplinary Committee Rules 2015, in both cases unless otherwise stated.

2. The appeal was brought by the Appellant pursuant to Regulation 13 against the finding of the Disciplinary Committee (DC) on 22 January 2019 that the Charge set out below was proved, and that the appropriate sanction was the cancellation of the Appellant's registration.

3. The appellant was represented by Ms Manchanda. The Presenting Officer for CIMA was Ms Aren.

4. This Appeal was heard together with the appeals of the other two candidates (Ms Shah and Ms Chaudhari) referred to in the charge and whom Ms Manchanda also represented. This determination is specific to Mr Janardanan's appeal.

Grounds of Appeal

5. The Appellant brought this appeal on the following three grounds:

   (a) That there was irregularity or unfairness in the procedure leading to the decision reached or sanction imposed;

   (b) That the decision reached was unreasonable or the sanction inappropriate; and

   (c) That the respondent produces new evidence, which could not reasonably have been produced to the DC.

[A full record of the original decision is provided below at page 14]

Background

6. In January 2019 the Disciplinary Committee of the Institute found that the Appellant had been guilty of misconduct as defined in the Institute's rules and determined that the cancellation of the Appellant's registration was the appropriate and proportionate response to the seriousness of the Appellant's misconduct.

7. The disciplinary proceedings brought against the Appellant were based upon the Appellant's answers to the Strategic Case Study Examination undertaken by him at the [redacted] Person Exam Centre in India, on 21 November 2017. The Appellant's answer to part of that examination was found to be very similar in structure, wording, and explanation to two other candidates, who had also taken the Strategic Case Study Examination on the same day at the same venue, albeit at different sessions.

8. The Appellant was aware of the CIMA Exam Scheduling Terms and Conditions and the Pearson VUE Professional & Regulatory Candidate Rules, which were designed to prevent cheating, and to maintain the integrity of the professional examination.

9. The Disciplinary Committee found that there had been collusion between the Appellant and the other two candidates (Ms Shah and Ms Chaudhari) in producing their answers to part of the Strategic Case Study Examination on the basis that they had prior knowledge of part of the exam paper before sitting the examination on 21 November 2017. The Disciplinary Committee also found that it was the Appellant who had prior knowledge of part of the exam paper, and that he had shared that knowledge with the other two candidates in question.

10. The Disciplinary Committee found that the Appellant's actions were dishonest, and that he had been involved in cheating.

11. The Disciplinary Committee determined that the Appellant's conduct amounted to misconduct and ordered the cancellation of the Appellant's registration with the Institute.

Submissions

12. Both Ms Manchanda and Ms Aren made submissions on behalf of their clients. Ms Manchanda told the Committee that she represented all the Appellants and the other two candidates, and that she was making her submissions on behalf of all of them as opposed to submissions for each individual separately.

Appellant's submission

13. Ms Manchanda made submissions, both in writing and orally.

14. The Committee considered that these were the submissions that were central to the grounds of appeal outlined below:

Ground 1 - Irregularity or unfairness in the procedure leading to the decision reached or the sanction imposed.

15. Ms Manchanda drew the Committee's attention to the evidence tendered on behalf of the Institute to the Disciplinary Committee, that purported to draw a comparison between the scripts of the Appellant and the other two candidates involved. She told the Committee that the Institute had cross-examined the other two candidates at length about the 'similarities' between their answer scripts.

16. Ms Manchanda focussed on two words that had been incorrectly transcribed onto the comparison script, and upon which the two candidates had been cross-examined in the mistaken belief that those words were used in each other's answer script.

17. Ms Manchanda submitted that it was irregular that such extensive cross-examination should occur in these circumstances, and that Ground 1 was made out. She further submitted that the Institute acted in bad faith when it carried out that cross-examination as it must have known of the 'error'. Ms Manchanda did not accept that it was an error in the transcription, but rather that CIMA had 'tampered' with the evidence, and that 'tampering' constituted an irregularity and unfairness in the procedure before the Disciplinary Committee.

Ground 2 - That the decision reached by the Disciplinary Committee was unreasonable or the sanction imposed was inappropriate

18. Ms Manchanda submitted that the decision of the Disciplinary Committee was unreasonable in that it failed to consider relevant evidence and made determinations on the facts that were at odds with the evidence. It was her argument that the Disciplinary Committee failed to consider two material pieces of evidence in coming to its decision and as a result reached unreasonable conclusions.

19. Firstly, Ms Manchanda submitted that the Disciplinary Committee failed to take into consideration the evidence of Mr D who had indicated that the answers of

the Appellant and the other candidates (which were said to be very similar in substance and form) were sub-standard, and would not have been good enough to pass the question for which they were tendered.

20. Ms Manchanda submitted that the Disciplinary Committee should have considered whether it was likely that a candidate with prior knowledge of the question, and with sufficient time to prepare their answer, would produce such sub-standard answers. She submitted that, had the Disciplinary Committee considered this evidence properly, it would have had a material impact upon their decision that the Appellant had been in possession of the question before the exam.

21. Secondly, Ms Manchanda submitted that the Disciplinary Committee failed to take into consideration the evidence of Ms S and Mr D in reaching the conclusion that Mr Janardanan had prior knowledge of the exam in question when he and the other two parties were preparing for the examination the day before.

22. Ms Manchanda drew the Committee's attention to the evidence of both Ms S and Mr D regarding whether there had been any data breaches or diversions of the exam questions. She pointed out that both Ms S and Mr D had been clear in their oral evidence that their investigations had found no evidence of a data breach, or that the questions had been leaked to unauthorised persons.

23. It was Ms Manchanda's submission, that there was no evidence upon which the Disciplinary Tribunal could reasonably conclude or infer that the Appellant had prior knowledge of the exam questions that could be asked on the 21 November 2017, and that its findings went against evidence of the Institute's own witnesses.

<u>Ground 3 - That the respondent produces new evidence, which could not reasonably have been produced to the Disciplinary Committee.</u>

24. Ms Manchanda submitted that the Disciplinary Committee relied significantly upon the word "*Centrallia*" that was unique to the exam paper as evidence that the Appellant had come into possession of the information before he sat the examination the next day. The Disciplinary Committee did not accept the Appellant's evidence that he had come across the word "*Centrallia"* in an electronic notepad that he had downloaded in advance of the examination.

25. Ms Manchanda told the Appeal Committee that on the day of the hearing, the Appellant was unable to locate the electronic notepad, but that he had now located the file. She submitted that this constituted new evidence, and that it

could not have reasonably have been produced to the Disciplinary Committee because the issue had arisen out of cross-examination.

Costs

26. Ms Manchanda submitted that the costs awarded against the Appellant were disproportionate. She told the Committee that the Appellant is a part-time tutor with limited means of income. She asked that the Committee set aside the order for costs imposed by the Disciplinary Committee, which was for the sum of £6,225.00.

Respondent's submissions

27. Ms Aren, on behalf of the Institute, submitted that the Appeal was without merit.

Ground 1 - Irregularity or unfairness in the procedure leading to the decision reached or the sanction imposed.

28. Ms Aren submitted that there it had been clear that the other two co-accused (Ms Shah and Ms Chaudhari) had been cross-examined in the honest belief that those two identical words had been used by them. Ms Aren pointed out that those were not the only similarities between the answer scripts upon which the other two co-accused had been cross-examined.

29. Ms Aren submitted that it was clear, upon looking at the originals of the answer script, that the error on the comparison chart was a typographical error and there was no evidence of bad faith.

Ground 2 - That the decision reached by the Disciplinary Committee was unreasonable or the sanction imposed was inappropriate

30. Ms Aren pointed out that the Institute's witness, Mr D, was stating that marking an answer script as a 'validity script' did not mean that the answer therein was so bad that the candidate would have failed that question. Ms Aren submitted that it was clear from Mr D's evidence, that as Chief Marker he would himself mark and score a script (marked then as 'validity script'), and then forward that script to be marked by another marker for comparison. The purpose was to ensure that there was a consistent standard of marking.

31. Ms Aren submitted that as it did not necessarily follow that the Appellant's answer was so sub-standard that it would not have passed, Ms Manchanda's argument did not have substance.

32. Ms Aren also submitted that there was evidence upon which the Disciplinary Committee could have properly inferred that the Appellant had prior knowledge

of the question that came out in the examination the next day. She submitted that Ms Manchanda was effectively arguing that the Institute had failed to prove how the Appellant had come into possession of the information, based upon the evidence of the witnesses that there had not been any data breach. Ms Aren reminded the Appeal Committee that the burden of proof upon the Institute in relation to the charge faced by the Appellant was that he had been in possession of the information, not how he came to be in possession of the information.

Ground 3 - That the respondent produces new evidence, which could not reasonably have been produced to the Disciplinary Committee.

33. Ms Aren drew the Committee's attention to the transcript of the Disciplinary Committee hearing and pointed out that the issue of the note pad had arisen on the first day of the hearing. She submitted that the Appellant could have produced it on the second day of the hearing, and pointed out that the Appellant had made no mention of the note pad, nor of any attempts made by him to locate the notepad.

34. Ms Aren submitted that the notepad was not new evidence, and drew the Appeal Committee's attention to the case of *Ladd v Marshall [1954] 3 All ER 745,* which set out the following requirements when considering evidence constituted 'new evidence':

> *First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.*

35. Ms Aren submitted that when the above requirements are applied to the notepad in question, it is clear that it would not constitute 'new' evidence'.

Legal Advice

36. The Legal Assessor advised the Committee of its role and powers under Regulation 13. His advice included the following:

    (a) this hearing was not to be a re-hearing of the disciplinary matter. It was the Appeal Committee's role to determine whether any of the grounds of appeal were made out, and if so, to take the appropriate action under the Regulations;

(b) the Appeal Committee shall not hear evidence of itself;

(c) the Appeal Committee is to be concerned only with the decision reached and/or sanction imposed by the Disciplinary Committee;

(d) in coming to its decision, the Appeal Committee should have regard to the transcript of the hearing on 21-22 January 2019, and also to the written determination of the Disciplinary Committee in this case.

Ground 1 - Irregularity or unfairness in the procedure leading to the decision reached or the sanction imposed.

37. In relation to this ground of appeal, the Legal Assessor's advice included the following:

(a) Pursuant to Regulation 8, it was the Investigation Committee's role to consider, *inter alia,* whether or not there was a *prima facie* case based upon the information before it, and if so, to take the appropriate action set out in Regulation 8;

(b) It was a relevant consideration whether the case was brought before the Disciplinary Committee improperly, either in bad faith or unreasonably. The Appeal Committee was entitled to look at the decision of the Investigating Committee when referring this case to the Disciplinary Committee;

(c) Rule 3 stipulates that the Disciplinary Committee has jurisdiction to hear a case as long as *the Investigating Committee has first determined that there is a prima facie case to answer*, and has referred it to the Disciplinary Committee. If the Investigating Committee referred a case to the Disciplinary Committee when there was no *prima facie* case, in itself that is not a ground of material irregularity. There is no prohibition upon the Disciplinary Committee hearing such a case. In such a situation, the appropriate course of action would be for the Respondent to make a submission, pursuant to Rule 19, that the Institute had provided insufficient evidence upon which the Panel may find all or any of the facts in the Charge proved;

38. The Legal Assessor advised the Committee that it should bear the above in mind when considering whether there was irregularity or unfairness in what the Disciplinary Committee did when reaching its decision or when imposing the sanction in this case. He also advised the Committee to have regard to the Institute's Indicative Sanctions Guidance printed in October 2015.

Ground 2 - That the decision reached by the Disciplinary Committee was unreasonable or the sanction imposed was inappropriate

39. In relation to this ground of appeal, the Legal Assessor's advice included the following:

(a) The Appeal Committee's role was to consider the following question:

Did the Disciplinary Committee's decisions (as to the facts, misconduct, and sanction) fall within the spectrum of reasonable decisions that it could have reached based upon the evidence before it?

(b) It was not the Appeal Committee's role to determine whether or not it agreed with the decision(s) of the Disciplinary Committee;

(c) The Appeal Committee must have regard, *inter alia,* to the transcript of the disciplinary hearing, and the reasons set out in the written determination of the Disciplinary Committee;

(d) Where the Disciplinary Committee reaches a conclusion by drawing an inference from the evidence before it, the Appeal Committee must consider whether that inference was reasonable on the evidence.

(e) When it comes to evidence that it is argued that the Disciplinary Committee did not consider when coming to its decision, the Appeal Committee should first consider whether that argument was correct. If it was, then the Appeal Committee should nevertheless consider whether that evidence was material, and could have made a difference to the decision of the Disciplinary Committee.

Ground 3 - That the respondent produces new evidence, which could not reasonably have been produced to the Disciplinary Committee.

40. In relation to this ground of appeal, the Legal Assessor's advice included the following:

(a) This ground of appeal tends to arise in situations where there was relevant evidence that was not known to exist at the time of the hearing. That is what is meant by new evidence. It could also mean evidence that was known to have existed at the time, but which could not reasonably have been produced to the Disciplinary Committee because its whereabouts was unknown, despite best efforts to locate it. A party

cannot simply make no effort to locate such evidence in the hope that his or her in-action would mean that the evidence could not reasonably have been produced. That would not be a reasonable interpretation of this ground of appeal.

(b) The Committee should consider whether it was reasonably foreseeable that the 'new' evidence in this case should have been produced to the Disciplinary Committee. It does not matter if the issue of evidence arose out of cross-examination, if it was foreseeable that it would be something to be reasonably explored;

(c) The Committee should consider what actions, if any, were taken by the Appellant and/or his representative when, and after, this matter arose during the disciplinary hearing.

(d) That the requirements set out in the case of *Ladd v Marshall* still applied today.

(e) First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

DECISION

41. The Committee accepted the advice of the Legal Assessor.

Ground 1 - That there was irregularity or unfairness in the procedure leading to the decision reached or sanction imposed

42. The Committee is satisfied that there was no irregularity or unfairness in the procedure adopted by the Disciplinary Committee. The error had been identified by the Presenting Officer at the Disciplinary Committee hearing. The Disciplinary Committee stated in their determination that:

> *"It also considered the comparison of the examination scripts carried out by CIMA which reproduced in table format the answers given by all three respondents. From these documents it was very obvious that large parts of the scripts written by them were extremely similar to each other".*

43. It was clear from the Disciplinary Committee's written determination that the typographical errors were not the sole pieces of evidence that they relied upon when determining that Particular 5 of the Charge was proved. The Disciplinary Committee had clearly used the comparison document as a guide but had verified similarities in the examination scripts themselves.

44. The Appeal Committee determined that this ground of appeal is not made out, and therefore this ground of appeal is rejected.

Ground 2 - That the decision reached by the Disciplinary Committee was unreasonable or the sanction imposed was inappropriate

45. The Appeal Committee looked at the evidence that was before the Disciplinary Committee and at the written determination. In particular this Committee noted the Disciplinary Committee's decision in relation to Particular 4 which stated:

> *"That the Panel was satisfied that, on the balance of probabilities, Mr Janardanan disclosed to both Ms Chaudhari and Ms Shah the contents of variant 3 of the exam and his answers to the relevant questions contained in it. The Panel was satisfied that Mr Janardanan had obtained this information in advance of the exam but was not satisfied with his explanation as to how he came into possession of it. In particular it considered it highly unlikely that he came across the website he referred to in the manner in which he said he did. The Panel noted that it was not provided with any information about the website nor any evidence to demonstrate that it contained the mock questions as he maintained. The Panel noted that it was also his evidence, and that of Miss Chaudhari and Miss Shah, that they had previously sourced other more mainstream websites for mock CIMA exam questions. The Panel did not accept that on the eve of the exam Mr Janardanan discovered a more obscure website containing the questions which appeared in the exam paper the following day. In addition, the Panel did not accept that his explanation that the fictitious place, "Centrallia" as referred to by him in his hand-written answers was something that he discovered in an electronic notebook in advance of the exam when no mention was made of it elsewhere. It was something that was unique to the exam paper. In any event the Panel was satisfied that he came into possession of this information and thereafter disclosed it to other candidates, namely Miss Chaudhari and Miss Shah. It accordingly found this charge proved."*

46. The evidence that the Appellant was more likely than not to have been in possession of the information was based upon his use of the fictitious place

"Centrallia". The Appellant's explanation of how he came to use that place in his preparations was considered and discounted by the Disciplinary Committee.

47. The Appeal Committee also noted that the Disciplinary Committee found the Institute's witnesses to be credible and honest, and that those witnesses had indicated that their investigations had not revealed there to be a data breach in relation to the questions. It does not necessarily follow that there was no breach. It was an exercise to be carried out by the Disciplinary Committee weighing the evidence before it. It could not be said that the conclusion of the Disciplinary Committee on this point was outside the spectrum of reasonable conclusions that it could have reached.

48. Therefore, this ground of appeal is rejected.

Ground 3 - That the respondent produces new evidence, which could not reasonably have been produced to the Disciplinary Committee.

49. The Appeal Committee applied the case of *Ladd v Marshall* to the information regarding the note pad. It determined that the Appellant had not demonstrated that the note pad in question could not have been obtained with reasonable diligence for use at the Disciplinary Committee hearing. It was in existence at the time, the Appellant was the only person to have control and possession of it.

50. The Charge against the Appellant was that he had prior knowledge of the contents of the examination paper or parts thereof. Therefore, it was extremely likely, absent any direct evidence of possession of such content, that the Institute's case would have to rely upon unique features contained within the examination paper, together with any such unique features found in documents tendered into evidence by the Appellant in relation to his preparation for the examination. Therefore, it was reasonably foreseeable that it would have been evidence upon which his defence would rely.

51. Furthermore, there was no evidence that the Appellant had made any attempts to locate it during the hearing, nor was there any application by him for time to locate that document.

52. The Appeal Committee also determined, based upon the information before it, that the evidential value of the note pad was limited in that it was a mere piece of paper with the bare information asserted by the Appellant on it. There is no evidence of its provenance, nor any evidence or information that linked it to the website that the Appellant asserts he downloaded it from.

53. Therefore, this ground of the appeal is rejected.

54. In the light of the above, the Committee determines that this appeal is rejected on all grounds.

Decision as to Costs

55. The Committee then turned to the issue of costs, both that awarded by the Disciplinary Committee and what costs, if any, should be awarded against the Appellant for these proceedings.

56. Ms Manchanda provided the Committee with some information about Mr Janardanan's means.

57. Ms Aren drew the Committee's attention to the schedules of costs presented at the Disciplinary Committee and for these proceedings.

58. This Committee accepted the Legal Assessor's advice. He advised the Committee of its power to award costs under Regulation 28, and that the Committee had absolute discretion as to whether costs should be paid, and if they should, what amount was to be paid and by whom. The Legal Assessor also advised the Committee to take into account the financial circumstances of the Appellant and her ability to pay when considering what, if any, would be appropriate and proportionate costs in these appellate proceedings, and also when considering whether to vary the costs awarded by the Disciplinary Committee against the Appellant.

59. This Committee first considered whether the costs sought by CIMA were reasonable in the circumstances, bearing in mind the general principle that costs should be reasonably and proportionately incurred, taking into consideration the issues involved, the complexity of the litigation and any other factors involved in the proceedings.

60. This Committee determined that the sum of £12,500.00 sought by CIMA for the proceedings before the Disciplinary Committee was reasonably and proportionately incurred, taking into consideration the issues involved and that these proceedings involved the participation of parties in India. The Committee also considered that the sum of £7975.00 sought as costs by CIMA for these appellate proceedings to be reasonably and proportionately incurred for the same reasons.

61. This Committee considered the costs awarded by the Disciplinary Committee against the Appellant. The Disciplinary Committee proceeded on the basis that the total costs sought by CIMA was the total amount that should be awarded. In coming to that decision, it did not take into account the collective ability of the three appellants to pay costs, nor the ability of this Appellant to pay costs. The

Disciplinary Committee then proceeded to apportion that figure between the three appellants, again without considering the ability of each appellant to pay the amount apportioned to them. In Mr Janardanan's case, that amount was £6225.00.

62. The Committee was aware that there were economic differences in the earning capacity between India and the United Kingdom. The Committee had no evidence to suggest that the Disciplinary Committee took this into account. The Committee determined that when this is taken into account, the figure of £12,500.00 should be adjusted to £2500.00. Applying the same principles, the Committee determined that the costs that should be awarded for these appellate proceedings should be adjusted to £1500.

63. The Appeal Committee took into account that Mr Janardanan is a tutor earning £349.00 per month. However, the Committee was not provided with any details of his monthly outgoings, other than that he was left with approximately £100 at the end of each month.

64. The Committee also took into account CIMA's Indicative Sanctions Guidance, which very helpfully provided summaries of previous sanctions and costs imposed by the three Committees.

65. Taking into consideration the nature of these proceedings and the issues involved, the Committee determined that it was appropriate that Mr Janardanan should pay some costs toward both proceedings. The Committee used the apportionment ratio as used by the Disciplinary Committee, which would equate to £2000 for Mr Janardanan.

66. Therefore the total costs to be paid by the Appellant is £2000.

CIMA Disciplinary Committee 22 January 2019
Mr Jince Janardanan of Mumbai, India

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 Panel noted that this case was conjoined with that of two other students, Anusha Chaudhari and Kajal Shah, for whom separate written determinations were provided.

The Charge

The Charge against the Respondent provided as follows:

1. "You are a registered student of CIMA.

2. On 21 November 2017, you sat Variant 3 of the Strategic Case Study Examination (the "Examination") at the [redacted] Pearson Exam Centre.

3. Before commencing the Examination, you had agreed to abide by the following examination rules (the 'Examination Contracts') which are:
   (a) CIMA Exam Scheduling Terms and Conditions;
   (b) Pearson VUE Professional & Regulatory Candidate Rules; and
   (c) CIMA Non-Disclosure Agreement.

4. Without the prior and express written agreement of CIMA, you disclosed to another or other candidate(s) the contents of the Examination, in whole or part, namely:
   (a) The questions within the Examination; and/or
   (b) All or part of any of your answers to the questions.

5. Your exam answers were extremely similar to those of another candidate or candidates.

6. These similarities arise as a result of collusion between you and another candidate or candidates.

7. Your actions at any or all of Charges 4-6 were dishonest.

8. By reason of the conduct alleged at any or all of Charges 4-6, you helped another candidate or other candidates to cheat.

9. By reason of the conduct alleged at any or all of Charges 4-6, you were involved in actions amounting to cheating.

10. By virtue of the conduct alleged at all or any of the above charges, you have breached the CIMA Exam Scheduling Terms and Conditions 2017, the Pearson Professional and Regulatory Candidate Rules Agreement (July 2012), and the CIMA Non-Disclosure Agreement 2015.

11. By virtue of the conduct alleged at all or any of the above charges, you are guilty of misconduct as defined by Byelaw 1 of the Royal Charter, Byelaws and Regulations (July 2015 versions). In particular, it constitutes "failure to comply with the Laws of the Institute" in that your actions constitute a breach of the fundamental principles of the

Code of Ethics (January 2015 version), which is applicable to all members of the Institute. In particular, your actions breached the following fundamental principles set out in that Code of Ethics:

(a) Integrity (Section 100.5(a) and 110), which requires you to "be straightforward and honest in all professional and business relationships"; and

(b) Professional Behaviour (Section 100.5(e) and 150), which requires you "to comply with relevant laws and regulations and avoid any action that discredits the profession".

Findings of Fact

Stage 1 – Decision on Facts

The Panel gave careful consideration to all the evidence that was presented, including that on behalf of Mr Janardanan. In addition to the documentary evidence, it took account of the witnesses who gave oral evidence and the overall impression created by each of them. The Panel noted that the following witnesses were called by CIMA;

- Tracey Fabiyi
- Mr D - Case Study Writer and Lead Marker for CIMA
- Ms S - Case Writer and Chief Marker for CIMA

In relation to Tracey Fabiyi the Panel noted she is the Lead Quality Assurance Manager for the Management Accounting Unit in the Examinations and Assessment Department for CIMA. As part of that role she is responsible for ensuring appropriate standards are maintained in order to protect the integrity of the examination process for CIMA. The Panel considered that she gave her evidence in a clear, straightforward and credible manner. She was consistent in what she said and was able to explain clearly the procedure whereby students are supplied with pre-seen material prior to sitting CIMA exams and the process that is then involved during the time period of an examination. She was also able to explain that all students are required to comply with all the terms and conditions of all CIMA exam regulations. This includes consenting to the CIMA Code of Conduct, agreement with the Exam Scheduling Terms and Conditions and the CIMA Non-Disclosure Agreement in relation to exam confidentiality. In addition, students are required to comply with regulations of Pearson VUE, the company responsible for the computer software on which CIMA exams are delivered and then submitted for marking purposes. On being advised of the concerns surrounding Mr Janardanan and two other students (subsequently identified as Anusha Chaudhari and Kajal Shah) she requested that Pearson VUE carry out its own investigation into the test centre and where the exam was held and invigilated she reported that no irregularities had been found. She further stated that the exam content would have been released by CIMA to Pearson VUE approximately 2 months before the examination date.

Miss Fabiyi stated that Mr Janardanan, together with Miss Chaudhari and Miss Shah (the Respondents), had enrolled for the exam on the same day, namely 9 November 2017, and that the timings of their sitting the exam on 21 November 2017 was as follows:

- Jince Janardanan - 09.02 – 12.04
- Anusha Chaudhari - 12.18 – 14.58
- Kajal Shah - 15.14 – 18.11

In relation to Mr D the Panel noted he is a Case Study Writer and Lead Marker for CIMA. In

particular he was appointed Lead Marker in relation to the Strategic Case Study exam sat by the Respondents and other students on 21 November 2017. The Panel considered that Mr D was very experienced and gave his evidence in a clear and straightforward fashion. He answered questions appropriately and reasonably. He had no previous knowledge of Mr Janardanan and the other Respondents who were unknown to him. The Panel had no reason to doubt his credibility.

Mr D explained that he had written this exam which consisted of 5 variants which were randomly allocated to the candidates between 21 November to 26 November 2017. He stated that he was required to write a "unique paper", the contents of which would be kept confidential in advance of the exam.

Mr D explained that as part of the marking process he had reviewed an exam script, number 21325464862, for sampling purposes and practice marking. The name of the student was not known to him. Whilst he initially considered the paper appeared to disclose a full answer to a particular variant, on closer reading he considered it did not properly answer the question. He subsequently reviewed another script, 21325465440, and noted a number of similarities between the two papers. As a result, he contacted his colleague, Ms S, who was the appointed Chief Marker, to alert her to his concerns. He did so by way of an email dated 22 November 2017 under the subject matter of "Plagiarism?". Following this he and Ms S were asked by Christine McNulty of CIMA to conduct an inquiry into their concerns. She had also advised them that a third script, 21325465048, had also been identified as being similar in wording and content to the other two scripts.

The exam scripts were subsequently identified as being the work of the following students:

- 21325464862 – Jince Janardanan
- 21325465440 – Anusha Chaudhari
- 21325465048 – Kajal Shah

Mr D spoke to the detailed report which he and Ms S had prepared. This showed the similarities in the answers provided by the three Respondents, including Mr Janardanan. All three provided answers to the same variant in the exam paper which were very similar in style and content to each other. In addition, he considered that throughout the scripts there were broad similarities in structure and content in the answers provided and, at times, identical phrases and wording used.

Ms S gave similar evidence to that of Mr D. She is also a Case Writer and Chief Marker for CIMA and has worked with them for a number of years. She explained that in this case she was the Chief Marker and her colleague, Mr D, the Lead Marker. As Lead Marker he had selected a number of practice scripts to be marked by him and also a number for marking for validity purposes, in order to ensure consistency in the marking across the exam papers. The Panel considered that Ms S gave her evidence in a clear and straightforward fashion. None of the students concerned in this case were known to her. The Panel considered her to be credible.

Ms S stated that she had 25 scripts to mark in relation to the examination undertaken by students on 21 November 2017. During the course of marking she discovered that one of the scripts appeared very similar in wording and content to one of the practice scripts which had been selected and marked by Mr D. She stated that she went to email him her findings but on opening her email she discovered he had already sent her an email on 22 November timed at 17.34 hours. As a result on the same date she contacted Christine McNulty the Examination Manager for Strategic Level Examinations at CIMA to raise the concerns she and Mr D had identified. On 13 December 2017 at a meeting at CIMA she and Mr D were spoken to by Ms McNulty to advise that a third exam script had been discovered which

appeared to be similar in content to the two scripts she (Ms S) had already seen.

As a result, she and Mr D had carried out their own independent comparisons and report of the identified scripts. It was her opinion that, "the similarities are so great it would have been impossible to produce the answers without having seen one of the scripts before". Mr D prepared the report which she then reviewed and was then sent to CIMA. In the final paragraph of her witness statement Ms S stated;

"I have compared these three scripts carefully and, in my opinion, the similarities between the three candidates' answers, which are to a very large extent identical to each other, cannot be accidental. Whist I have seen similarities in papers, I have never seen scripts that are as similar to each other as these three. They are obviously the same in parts … and they are distinctive ... I do not know how the three candidates could have produced such similar scripts."

Respondent's Case

The Panel gave careful consideration to the evidence of Mr Janardanan and the evidence he presented. He explained that he was a tutor for CIMA examinations and on this occasion was sitting this particular exam himself. He advised that he had been tutoring Ms Chaudhari and Ms Shah since 2015 and 2016, respectively. He explained that on 20 November 2017 he had discovered "mock CIMA questions" on a Polish website, http://www.skwp.poznan.pl/files/pliki/575844cfac431.pdf, which he downloaded and proceeded to discuss with Ms Chaudhari and Ms Shah, on the same date when they met for a final tutorial at about 5pm. As a result he prepared handwritten answers to the questions which he had then photocopied and given to them before they had left at approximately 9.30 pm. He advised that he did not ask them to "rote learn" the answers but to understand the overall content of them. He was very surprised to see these particular questions, which comprised variant 3 in the actual exam paper, appearing the following day. He did not think it necessary to report this to CIMA as it was a mock question he had seen and, as such, did not consider that it contravened the rules and regulations of the exam.

The Panel noted that Mr Janardanan was supported in his evidence by Miss Chaudhari and Miss Shah. They both gave evidence to the effect that they were students in Mr Janardanan's tutorial class and he had provided certain questions to them the day before the exam. They had discussed these with him and he had prepared model answers which he photocopied for them. They had not expected to see the same question appearing in the exam paper the following day. Both maintained that their answers were their own, albeit similar in content because of the work and discussions which had taken place with Mr Janardanan the day before.

Having reviewed all the evidence and heard the submissions of Miss Aren, on behalf of CIMA, and Miss Manchanda, on behalf of the respondents, the Panel determined the following in relation to each part of the Charge:

1. That Mr Janardanan is a registered student off CIMA, as admitted by him

2. That on 21 November 2017 he sat the CIMA Strategic Case Study exam as specified in the Charge at the [redacted] Pearson Exam Centre, as admitted by him

3. That he agreed to abide by the relevant examination rules, as specified in the Charge and also admitted by him.

4. That the Panel was satisfied that, on the balance of probabilities, Mr Janardanan

disclosed to both Ms Chaudhari and Ms Shah the contents of variant 3 of the exam and his answers to the relevant questions contained in it. The Panel was satisfied that Mr Janardanan had obtained this information in advance of the exam but was not satisfied with his explanation as to how he came into possession of it. In particular it considered it highly unlikely that he came across the website he referred to in the manner in which he said he did. The Panel noted that it was not provided with any information about the website nor any evidence to demonstrate that it contained the mock questions as he maintained. The Panel noted that it was also his evidence, and that of Miss Chaudhari and Miss Shah, that they had previously sourced other more mainstream websites for mock CIMA exam questions. The Panel did not accept that on the eve of the exam Mr Janardanan discovered a more obscure website containing the questions which appeared in the exam paper the following day. In addition, the Panel did not accept that his explanation that the fictitious place, "Centrallia" as referred to by him in his hand-written answers was something that he discovered in an electronic notebook in advance of the exam when no mention was made of it elsewhere. It was something that was unique to the exam paper. In any event the Panel was satisfied that he came into possession of this information and thereafter disclosed it to other candidates, namely Miss Chaudhari and Miss Shah. It accordingly found this charge proved.

5. The Panel found that Mr Janardanan's answers were extremely similar to the other candidates concerned, namely Miss Chaudhari and Miss Shah. It was his evidence that he had hand-written the answers during their last tutorial which he had given to them in advance of the exam. The Panel also noted the evidence of Mr D and Ms S and their report. It also considered the comparison of the examination scripts carried out by CIMA which reproduced in table format the answers given by all three respondents. From these documents it was very obvious that large parts of the scripts written by them were extremely similar to each other. This was particularly true in relation to the answers given with the exception of the final part, "CSR Coverage" and "Advice in regards to Discount" where Mr Janardanan's answer differed from that of Miss Chaudhari and Miss Shah. However the Panel was satisfied that overall the style, content and similarity of words and phrases was so similar for the charge to be proved. For these reasons the Panel found the charge proved.

6. The Panel found the similarities in answers arose out of Mr Janardanan obtaining this part of the exam in advance of 21 November 2017 and then preparing handwritten answers which he provided to Miss Chaudhari and Miss Shah to learn. He did so in the knowledge that the questions, identified as variant 3, would appear in the exam paper. By doing so the Panel determined that he colluded with Miss Chaudhari and Miss Shah as they were all aware of the likelihood of the questions being asked for which they had then devoted considerable time in preparation, to the exclusion of other study. In the circumstances, and on the balance of probabilities, the Panel finds the charge proved.

7. The Panel was satisfied that Mr Janardanan's actions in relation to parts 4 – 6 of the Charge were dishonest. Applying the test as set out in *Ivey v Genting Casinos* the Panel considered that Mr Janardanan was aware of the likelihood of the questions appearing in the exam and by discussing and preparing answers with Miss Chaudhari and Miss Shah in advance he acted in a dishonest fashion, according to the standards of a reasonable and honest person. For these reasons the Panel finds the charge proved.

8. The Panel was further satisfied that by acting as he did Mr Janardanan helped Miss Chaudhari and Miss Shah to cheat in that he supplied them with information,

including the questions, in advance of the exam from which they were able to rehearse the answers he prepared for them. This amounted, in the Panel's view to cheating and it accordingly found the charge proved.

9. In addition, the Panel considered that Mr Janardanan's own actions in obtaining the content of the questions and preparing answers to them in advance of the exam he sat also amounted to cheating. For the same reasons it found the charge proved.

10. The Panel was also satisfied, having regard to the allegations found proved above, that this amounted to a clear breach of the relevant parts of the CIMA Exam Scheduling Terms and Conditions, the Pearson Professional and Regulatory Candidates Rules Agreement and the CIMA Non-Disclosure Agreement.

Stage 2 – Decision on Misconduct

The facts having been proved, the Panel 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".

The Panel had regard to the submissions of Miss Aren, on behalf of CIMA, who submitted that given the circumstances and the facts found proved Mr Janardanan had engaged in dishonest conduct by obtaining confidential information relating to the examination, which he had shared with Miss Chaudhari and Miss Shah. As a result, they were at an unfair advantage as they were in possession of information in advance of the exam in relation to the nature of the questions which were asked. By doing so Mr Jandardanan's actions amounted to misconduct as defined by CIMA.

In response Miss Manchanda submitted that Mr Janardanan continued to deny the allegations and maintained that his actions did not amount to misconduct. He was an experienced tutor who was professional and held in high regard. She further submitted that there were certain discrepancies in the CIMA comparison report and the actual answers by each Respondent. She submitted that this amounted to "evidence tampering" by CIMA.

The Legal Assessor advised the Panel, with reference to *Roylance v GMC [2001] 1 AC 311,* that in order to amount to misconduct a degree of seriousness must attach to the conduct found proved. Something that is trivial or isolated may of itself not amount to misconduct. It was a matter for the Panel to determine using its collective professional skill and judgement.

The Panel had regard to the submissions and the advice of the Legal Assessor. It accepted the definition of "misconduct" as set out in the Byelaws of CIMA.

Having done so the Panel considered that the actions of Mr Janardanan amounted to serious misconduct for personal gain. In doing so he brought himself and the profession into disrepute.

The Panel did not consider that Miss Manchanda's submission of "evidence tampering" was well founded. It considered that the discrepancies she had identified amounted to one or two words which were different between the Respondent's exam answers and those quoted in the tables of CIMA's comparison report. It did not in way alter the overall content, style or wording of the Respondents' respective answers

Having taken all matters into account the Panel was entirely satisfied that Mr Janardanan had failed to comply with the Laws of CIMA and, by acting as he did, his conduct amounted

to serious misconduct. In particular he had breached the fundamental principles as set out in the CIMA Code of Ethics and as specified in allegation 11 of the Charge, namely a breach of Integrity and Professional Behavior in accordance with sections 100.5 (a) and (e), 110 and 150. By doing so he brought himself and the profession into disrepute.

Stage 3 - Mitigation and Sanction

Having found misconduct as alleged the Panel went on to consider the questions of mitigation and sanction. In considering what sanction if any to impose, it had regard to the Indicative Sanctions Guidance and to the advice of the Legal Assessor, who reminded the Panel of the need to consider the public interest at this stage. This included maintenance of public confidence in the profession and CIMA as the regulator as well as the upholding of proper standards of conduct and performance. The primary purpose of any sanction was to protect the public and the public interest but not to punish, although it might have that effect. The Panel should also have regard to the principle of proportionality and therefore any sanction imposed should be the least onerous suitable to reflect the seriousness of the misconduct. Accordingly the Panel should look at each sanction in ascending order of severity, starting with the least restrictive.

The Panel took into account the following mitigating factors:

- There was no previous disciplinary record
- This was a single incident of dishonest conduct
- Mr Janardanan had engaged in this regulatory process

The Panel also took account the following aggravating factors:

- This amounted to serious dishonesty
- The actions were planned
- There was collusion
- It was a breach of trust
- There was an intention to gain
- The reputation of CIMA was severely undermined

The Panel considered the available sanctions in ascending order with reference to the Indicative Sanctions Guidance. The Panel had regard to the nature of the charges found proved and the circumstances surrounding them. It considered that this was dishonest conduct calculated to allow him and others to pass an important professional examination in order to qualify for full CIMA membership.

Due to the serious nature of the misconduct the Panel did not consider that an admonishment, reprimand or severe reprimand was appropriate or proportionate. The imposition of such a sanction would not adequately address the nature of the misconduct. It would not send the appropriate message to the profession or uphold public confidence in CIMA.

The Panel further considered that the imposition of a monetary penalty was not sufficient to reflect the serious nature of the misconduct as it would not adequately address the public interest.

As Mr Janardanan was a registered student the Panel noted that conditional registration and suspension of membership were not available for consideration. In any event the Panel did not consider that such sanctions were sufficient to adequately address the public interest in ensuring that public confidence in prospective CIMA members and CIMA, as the regulator, is maintained.

In all the circumstances the Panel determined that the only sanction which properly addressed the issues of protection of the public and the wider public interest was for Mr Janardanan's membership to be cancelled. The Panel was therefore satisfied that cancellation of Mr Janardanan's (student) registration was both appropriate and proportionate.

Stage 4 - Costs

CIMA had made an application for costs of £12,450 served on the Respondents on 10 October 2018. Mr Janardanan had not provided evidence of his means in relation to being able to pay a costs order but it was confirmed by Miss Manchanda that he continued to work as a tutor. The Panel also took into account the role he had played. Having done so it considered that it was appropriate and proportionate that he bear 50% of the costs order, which CIMA was justified in applying for.

In all the circumstances, and to reflect his role in the incident, the Panel determined that there should be a costs order in the sum of £6,225 in respect of Mr Janardanan, which amounted to 50% of the total costs.