

## PUBLISHED DECISION

### DISCIPLINARY COMMITTEE HEARING HELD ON 8 JANUARY 2025

**Ms Malaveerage Risadi Pulara Dewaraja (Former CIMA Registered Student)  
of Mahara, Sabaragamuwa, Sri Lanka**

References in this decision to Regulations are to those in the Institute's Royal Charter, Byelaws and Regulations (2024) and references to Rules are to the Institute's Disciplinary Committee Rules 2020, in both cases unless otherwise stated.

#### **Preliminaries**

The hearing was conducted remotely via Zoom.

#### Admission of further evidence (Rule 11)

1. Mr C (CIMA's representative) applied to the Committee to admit into evidence a bundle of documents concerning CIMA's service of the notice of hearing on Ms Dewaraja and other efforts taken by CIMA to bring the hearing to Ms Dewaraja's attention. He also asked the Committee to admit a copy of CIMA's Code of Ethics ("the Code").
2. Mr C submitted that the Committee had power to admit the further evidence, pursuant to Rule 11, because the further evidence was relevant to the hearing and it was fair to admit it. The Legal Assessor also referred the Committee to Rule 11 and its general power to regulate its own proceedings, pursuant to Rule 10. The Legal Assessor advised the Committee to consider relevance and to balance fairness to Ms Dewaraja with fairness to CIMA.
3. The Committee was satisfied that the Code of Ethics was readily available to students, as a publicly-available document and noted that a copy had been previously sent to Ms Dewaraja by CIMA. It took into account that the documents relating to service had relevance to any decision whether it was fair to proceed with the hearing. The Committee decided that there was no prejudice to Ms Dewaraja in admitting the Code, of which she should be fully aware. In relation to the service documents, the Committee was of the view that it was right to admit these, in order to be in a position to fairly determine any further application. The Committee considered that it needed to be in a position to properly assess any efforts CIMA had taken in relation to giving notice of the hearing. The Committee decided that it was fair to admit both sets of documents.

#### Service and proceeding in absence (Rule 15)

4. Ms Dewaraja having not attended the hearing, Mr C applied to the Committee to proceed with the hearing despite Ms Dewaraja's non-attendance and lack of representation, pursuant to Rule 15(1) and 15(2).
5. Mr C took the Committee through the evidence relating to service of the notice of the hearing. He submitted that, although the notice and other documents had been emailed to Ms Dewaraja's registered email address as recorded by CIMA, the email delivery receipts had advised them as

'undeliverable'. However, he submitted, documents in the bundle showed that email delivery in August 2024 to the same email address had been delivered.

6. Mr C referred the Committee to the evidence concerning attempts to deliver the notice and other documents by postal courier to Ms Dewaraja's registered postal address in Sri Lanka. These attempts had also been unsuccessful, although the evidence showed the address sent to as the postal address on CIMA's register. Mr C also took the Committee to an Attendance Note he had prepared, showing details of attempts to locate Ms Dewaraja by using 'LinkedIn' and 'Google', which had also been unsuccessful.
7. Mr C submitted that Rule 5 concerning service of the notice of hearing permitted service to the email address on the database held by CIMA. He submitted that the Rule deemed service as occurring on the day of sending, if by email or the next business day, if served by post. Mr C submitted that all reasonable steps had been taken to bring the hearing to Ms Dewaraja's attention. He submitted that, if the Committee was satisfied as to due service or that all reasonable steps had been taken, the Committee had a discretion to proceed with the hearing in Ms Dewaraja's absence.
8. Mr C submitted that no reasons for Ms Dewaraja's absence had been communicated to himself or to CIMA's professional regulatory staff. Mr C submitted that the question whether to exercise the discretion to proceed in absence must be exercised with the utmost care and caution. He said that the Committee should consider the guidance set out by the courts in *R v Jones* [2002] UKHL5 and *GMC v Adeogba* [2016] EWCA Civ 162, outlining the particularly relevant factors. He submitted that it was fair to proceed in Ms Dewaraja's absence.
9. The Legal Assessor advised the Committee that it should decide whether the requirements of Rule 15 had been satisfied and, if so, consider its discretion to proceed, based on the guidance in *Jones* and *Adeogba*. He advised that, in *Adeogba*, the court had referred to the requirement on professionals to maintain a correspondence address with their regulator and had mentioned the importance of the fair, expeditious disposal of proceedings. He advised that the court had referred to the need to balance the interests of Ms Dewaraja, as a prime consideration, with the interests of the public.
10. The Committee was satisfied from the documents that proper notice of the hearing had been served on Ms Dewaraja's registered email address, as recorded on CIMA's records, which met the requirement in Rule 5 to 'dispatch' notice. That notice was deemed served 35 days before the hearing, by virtue of Rule 5(6). The notice set out the date, time and place (virtual) for the hearing. Although the evidence showed that the emails had not been delivered, the Committee found that all reasonable steps had thereafter been taken, by postal service and by contact enquiries, to locate Ms Dewaraja. The Committee took into account that, in *Adeogba*, the court had referred to the obligation on professionals to maintain an effective contact address.
11. The Committee acknowledged that, if it did proceed, there would be some disadvantage to Ms Dewaraja, particularly in light of the Allegations including a charge of dishonesty. The Committee would not hear from Ms Dewaraja. The Committee took into account that there had been no engagement from Ms Dewaraja since the complaint was raised. It was relevant that Ms Dewaraja would have been aware that the examination had been revoked, and that there was an issue over her conduct. It was also of note that CIMA's letter dated 09 August 2024 outlining the complaint had been delivered to Ms Dewaraja's registered email address.
12. The Committee took into account that Ms Dewaraja had not responded to the notice, nor communicated at all with CIMA during the proceedings. No reasons for non-attendance had been communicated. The Committee considered that the complaint raised important issues around the integrity of the examination system and also the integrity of its students. There is an important public interest in the expeditious disposal of regulatory proceedings, which the courts have recognised. The Committee had no request before it, for the hearing to be adjourned and no reason to believe, in light of Ms Dewaraja's non-engagement, that an adjournment would be likely to secure Ms Dewaraja's attendance. There were no effective contact addresses in place.
13. Having balanced Ms Dewaraja's interests with the interests of CIMA, which stands for the interests of the membership and the public interest, the Committee concluded that it was fair and appropriate to proceed with the hearing in the absence of Ms Dewaraja.

## **The Charge**

The Charge against Ms Dewaraja provided as follows:

### **“Factual Allegations**

1. You are a Registered Student of CIMA.
2. On 29 March 2024 you sat the BA2 – Fundamentals of Management Accounting examination online (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 Pearson Vue Professional and Regulatory Candidate Rules Agreement.
4. You used a mobile phone during the Exam for a non-technical issue.
5. You did not request prior approval from the Exam proctor to access the mobile phone.
6. You attempted to conceal the mobile phone from the Exam proctor.
7. Your conduct as set out in paragraphs 4-6 either individually or collectively was dishonest.
8. Your conduct as set out at paragraphs 4-6 above either individually or collectively constitutes a breach of the following rules applicable to the Exam:
  - a. Rule 5.6.8.1 of the Exam Scheduling Terms and Conditions, which defines “using a mobile phone for non-technical issues” as amounting to a testing irregularity;
  - b. Rule 8 of the Pearson VUE Professional & Regulatory Candidate Rules Agreement, which requires that you receive permission prior to accessing personal items including mobile phones; and
  - c. The provisions of the CIMA Non-Disclosure Agreement, which clarify that “using a mobile phone” is a contravention of exam rules.

### **Misconduct allegations**

9. By reasons of the facts alleged above, either individually or collectively, you are guilty of misconduct as defined by Byelaw 1 of the Institute’s Royal Charter Byelaws and Regulations (2024) on the basis that you “Failed to comply with the Laws of the Institute” as follows:
  - a. You breached the Exam Scheduling Terms and Conditions; and/or
  - b. You breached the Pearson VUE Professional and Regulatory Candidate Rules Agreement; and/or
  - c. You breached the CIMA Non-Disclosure Agreement; and/or
  - d. Your actions constitute a breach of the Fundamental principles of the Code of Ethics 2020), in particular:
    - i. Integrity (section R111.1); and/or
    - ii. Professional Behaviour (section R115.1)”

## **Decision on Facts**

The Disciplinary Committee (Committee) Members had all received and read the case papers. The Committee was provided with a copy of the Notice of Hearing (7 pages), a Draft Statement of Facts (3 pages) and a bundle of Supporting Documents (78 pages). The Committee admitted in addition the further evidence on service (6 pages). The Committee also had sight of the video recording of the examination.

CIMA relied on the evidence of Ms G, Lead Manager for Quality Assurance and Assessment of the Management Accounting Education Department at CIMA. Ms G provided her written witness statement

with exhibits. Ms G attended to give oral evidence, which she did on affirmation and answered the questions from the Committee and from Mr C.

Ms Dewaraja did not attend the hearing and there were no written or other representations on the Allegations placed before the Committee. There were accordingly no formal admissions from Ms Dewaraja to the factual allegations in the Charges and the burden of proving the facts lay on CIMA. The obligation on CIMA was to prove the facts on the 'balance of probabilities'.

The Committee was provided, in the evidence, with a copy of Ms Dewaraja's contact details. These and Ms G's evidence to the effect that Ms Dewaraja had sat for CIMA exams satisfied the Committee that Ms Dewaraja was a registered student of CIMA. The Committee found Charge 1 proved.

The Committee read Ms G's witness statement and considered the exhibits which she provided. It heard Ms G give oral evidence and answer questions from the Committee and from Mr C. The Committee found Ms G to be a reliable and knowledgeable witness who was prepared to make appropriate concessions in giving evidence. Ms G assisted the Committee with the operation of CIMA's examination process and how the examination rules and safeguards applied. Ms G exhibited a 'Chat log' between the exam proctor and Ms Dewaraja and also a video recording of Ms Dewaraja taking the exam. The Committee accepted Ms G's explanation that the exam took place on 29 March 2024, despite the 'Chat log' recording 30 March 2024.

The Committee accepted, on the basis of Ms G's evidence and exhibits including the video, that Ms Dewaraja entered and sat for the BA2 examination on 29 March 2024 ("the Exam"). The Committee found Charge 2 proved.

It was Ms G's evidence that all students must consent to CIMA's Code of Ethics as part of the registration process as a student. When a student schedules an examination, they are presented with CIMA's Exam Scheduling Terms and Conditions within CIMA's online platform. A student must agree to those terms before moving forward in the booking process.

Ms G also stated that on the day of the examination, the student is presented with the CIMA Non-Disclosure Agreement ("NDA") and the Pearson VUE Professional and Regulatory Candidate Rules Agreement. She further stated that a student must agree to these rules before proceeding and therefore, if a student takes the BA2 examination, it follows that they have agreed to all the exam rules.

The Committee was satisfied, taking into account Ms G's evidence and its findings that Ms Dewaraja had registered as a student and gone on to sit the BA2 examination, and that she had agreed to each of the sets of rules set out in Charge 3 ("the Exam Rules"). The Committee found Charges 3(a), 3(b) and 3(c) proved.

In her evidence, Ms G referred the Committee to the video recording, at 101.33 minutes. The Committee could see from the video that the proctor's camera was partially obscured at that time, but that Ms Dewaraja could be seen looking at a device which appeared to be a mobile phone. The Committee noted that earlier in the video, before the exam had commenced, Ms Dewaraja had appeared to have a mobile phone which was similar in appearance. Further, in the 'Chat log' it was recorded that, when challenged by the Exam proctor, Ms Dewaraja had admitted using a mobile phone, though offering an explanation.

The Committee noted the explanation of Ms Dewaraja as recorded in the 'Chat log', that she had only used the phone to establish a 'hotspot' to continue her internet connection. The Committee considered that this explanation was inconsistent with other parts of the evidence, in particular:

- a. The video displayed no apparent issues with connectivity immediately prior to the use of the mobile phone;
- b. There was no 'Chat log' or other indication of any communication with the proctor over connection issues. The Committee noted that detailed oral instructions about the checking for mobile phones were issued at the start of the video;
- c. Ms Dewaraja appeared to deliberately obscure the view of the Exam proctor's camera whilst using the phone, which was unnecessary for just resolving a connection issue;
- d. The use of the mobile phone was very brief and unlikely to have been possible to turn it into a 'hotspot' in that time; and

- e. The video recording appeared to show no change throughout the use of the phone, in particular, no 'blue screen' which the Committee was told appears when the transmission is interrupted or internet connection is lost.

The Committee found that it was consistent with these factors that Ms Dewaraja had used the mobile phone for other purposes in the Exam, and for a 'non-technical issue'. The Committee concluded that, on the balance of probabilities, Ms Dewaraja had used the mobile phone for a 'non-technical issue'. The Committee found Charge 4 proved.

The Committee noted that there was no reference to any request to the Exam proctor for approval of access to the mobile phone in the 'Chat log'. It was of the view that the clear challenge from the proctor over the use of the mobile phone was inconsistent with any approval having been requested. The Committee accepted Ms G's evidence that there was no request made during the course of the video for any approval.

The Committee found Charge 5 proved.

The Committee found that the video recording was clear that the Exam proctor's camera had been partially obscured at the same time as Ms Dewaraja was shown to be looking at the device which appeared to be a mobile phone. It appeared that Ms Dewaraja had attempted to obscure the camera. The Committee rejected the explanation offered by Ms Dewaraja, as referred to above for the reasons given. The Committee could see no need for the camera to be obscured, if Ms Dewaraja had been attempting to deal with a technical issue.

The Committee considered that it was more likely than not that Ms Dewaraja had attempted to prevent the Exam proctor seeing that she was using a mobile phone. The Committee concluded that this had been an attempt to conceal the mobile phone from the Exam proctor and it found Charge 6 proved.

The Committee was satisfied that the Exam Rules (i.e. each of the sets of rules in Charge 3) made clear that the use of a mobile phone was not permitted in the Exam, save in the limited circumstances that prior approval had been obtained, as set out in those rules.

The Committee took into account its previous findings that Ms Dewaraja had agreed to the Exam Rules, had not sought approval to access the mobile phone and had attempted to conceal its use from the Exam proctor. The Committee found that Ms Dewaraja knew that she should not be using a mobile phone for a non-technical issue, but had gone on to use it.

The Committee was satisfied that ordinary decent people would regard Ms Dewaraja's conduct in using the mobile phone for a non-technical issue was dishonest.

The Committee also considered that Ms Dewaraja's behaviour indicated that she knew that she needed but did not have the Exam proctor's approval for access to the mobile phone. It decided that ordinary decent people would also regard the failure to request approval as dishonest.

The Committee was of the view that Ms Dewaraja's attempted concealment of the mobile phone from the Exam proctor indicated her knowledge that she should not be using the mobile phone in circumstances where she did not have approval and in contravention of the Exam rules. The concealment appeared deliberate and coincided with the use of the mobile phone. The Committee decided that ordinary decent people would also regard the attempted concealment as dishonest.

The Committee concluded that Ms Dewaraja's conduct as set out in Charges 4, 5 and 6 was, taken individually and also collectively, dishonest conduct.

The Committee was provided, as well as Ms G's exhibits, with copies of the Exam Scheduling Terms and Conditions, the Pearson VUE Professional & Regulatory Candidate Rules Agreement and the CIMA Non-Disclosure Agreement ("NDA").

The Committee noted, on consideration of the three sets of Exam rules, that these set out respectively, the testing irregularity in Charge 8(a), the requirement for permission, per Rule 8 in Charge 8(b) and the contravention in the NDA, as in Charge 3(c).

The Committee, having considered each set of rules, decided that each of the Charges 4, 5 and 6 amounted to a breach of each set of the Exam rules. In addition, taking the conduct in those Charges collectively as a course of conduct this breached each of the set of Exam rules.

The Committee found Charges 8(a), 8(b) and 8(c) proved.

### **Decision on Misconduct**

The facts having been found 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.

In relation to the Charges, the Panel made the following findings:

Pursuant to CIMA's Disciplinary Rules 2000, the "Laws of the Institute" has the meaning ascribed to it in the Bye-laws. Bye-law 1 sets out that "Laws of the Institute" means:

*"'Laws of the Institute' means the Charter, these Bye-laws, the Regulations, and any documents further regulating the business and affairs of the Institute or its Members and Registered Students made and approved by or on behalf of the Council in pursuance of a Bye-law or Regulation in force from time to time;"*

The Committee considered that this included the Exam Scheduling Terms and Conditions and the CIMA NDA. In that the Pearson VUE Professional and Regulatory Candidate Rules Agreement was entered into for the purposes of the examination process undertaken by CIMA students, the Committee considered that these also fell within the definition.

The Committee had found that Ms Dewaraja had breached Rule 5.6.8.1 of the Exam Scheduling Terms and Conditions (Charges 8 (a) above). The Committee had found that Ms Dewaraja had breached the Pearson VUE Professional and Regulatory Candidate Rules Agreement (Charge 10(b) above). Further, it had found that Ms Dewaraja had breached CIMA's NDA (Charge 8(c) above).

The Committee therefore found that Ms Dewaraja had breached the Laws of the Institute.

The Committee considered the terms of the Fundamental Principles of (i) Integrity (section R111.1) and Professional Behaviour (section R115.1). It accepted that the Code of Ethics (2020) also forms part of the Laws of the Institute and had been expressly accepted by Ms Dewaraja, in consequence of her registration as a registered student of CIMA.

The Committee considered that, in relation to her dishonest conduct in the use of the mobile phone during the exam for a non-technical issue (Charge 4), without having sought prior approval (Charge 5) and the attempt to conceal the phone from the Exam proctor (Charge 6), Ms Dewaraja had breached the Fundamental Principle of Integrity.

The Code of Conduct sets out that integrity requires an accountant and/or student to be straightforward and honest in all professional and business relationships and Ms Dewaraja's dishonest conduct clearly breached this Fundamental Principle. Her conduct was not straightforward nor honest and she had not demonstrated integrity.

Likewise, in relation to the same dishonest conduct, the Code of Conduct sets out that *"A professional Accountant shall comply with the principle of professional behaviour, which requires an accountant to comply with relevant laws and regulations and avoid any conduct that the accountant knows or should know might discredit the profession."* The Committee considered that Ms Dewaraja would, or should, have known that breaching the exam rules and her conduct in trying to cover this up was conduct that discredited the profession.

The Committee was also of the view that Charges 4 to 8 individually and when considered cumulatively as a course of action breached both these Fundamental Principles.

The Committee found that the conduct of Ms Dewaraja was not of a minor nature and was sufficiently serious as to amount to misconduct, as defined in Byelaw 1.

## 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, the Panel 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 considered that there were no particular features of the case which aggravated or mitigated the Charges which had been brought as to Ms Dewaraja's dishonest misconduct. Ms Dewaraja had not engaged with CIMA, to offer any explanation for her conduct, or to offer any attempt to make amends or remediation. The Committee therefore had no mitigation to consider.

The Committee accepted the legal advice that it had to act proportionately and impose the least restrictive sanction which met the seriousness of the case. The Committee also bore in mind CIMA's guiding principles of the disciplinary process, namely to:

- protect the public;
- maintain public confidence in the profession of management accountancy;
- uphold proper standards of conduct in the profession;
- ensure that CIMA's conduct processes are effective in dealing with complaints of professional misconduct in the interests of the public and all stakeholders; and
- to ensure that complaints are dealt with fairly and expeditiously.

The Committee considered that the maintenance of proper exam processes is fundamental to the qualification process, which upholds standards amongst the profession. In addition, dishonesty strikes at the core principles and values of the profession, which included integrity and honesty.

The Committee addressed the sanctions starting with the least restrictive. It considered that the case was too serious to take no action in response to the misconduct, there were no exceptional circumstances about the case, which justified this. The Committee decided that to end the case with an admonishment neither served to mark the seriousness of the case or to maintain public confidence in the profession. The Committee also considered that Admonishment was appropriate for conduct at the lower end of the spectrum, but the misconduct in this case was at the higher end.

The Committee next considered firstly a reprimand and then a severe reprimand. It noted that neither a Reprimand, nor a Severe Reprimand met the seriousness of the case, or would satisfy the public interest in light of the serious and attitudinal nature of the dishonesty in the case.

The Committee did not consider that a fine was an adequate way of marking the seriousness of the misconduct, nor protecting the public and this would not address any risk of repetition of any dishonest behaviour.

The Committee also did not think that the imposition of any conditions on her registration as a student would be adequate, to address the seriousness of the misconduct. The Committee could not formulate workable conditions that would adequately protect the public. Dishonesty is an attitudinal problem and it is difficult to formulate conditions that would deal with that. Given that Ms Dewaraja had not participated in the proceedings, it had no confidence that any conditions would be complied with.

The Committee considered that although the profession wished to encourage individuals to join it and qualify, there was a fundamental requirement of maintaining public confidence in the profession that students were properly qualified and had integrity. In light of the seriousness of the case involving dishonesty on the part of Ms Dewaraja, there was no other means of protecting the public. Public confidence in the profession as a whole would be undermined if Ms Dewaraja was permitted to remain on the register as a Registered Student and therefore no sanction less than cancellation of her student registration was proportionate and appropriate in all the circumstances.

The Committee directed the cancellation of Ms Dewaraja's Student Registration and determined that she should pay the sum of £4600.00 in costs.