

PUBLISHED DECISION

DISCIPLINARY COMMITTEE HEARING HELD ON 7 JANUARY 2025

Ms Malsha Wilagama (former CIMA Registered Student), of Kadawatha, 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 held 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 service of the notice of hearing. Mr C submitted that the Committee had power to admit evidence pursuant to Rule 11, on the basis that it was fair to do so, and the evidence was relevant. He submitted that the documents were relevant as they went to the issue of proving service of notice of the hearing.
2. The Committee was satisfied that the documents were relevant to the issue of service of notice of the hearing. It considered that it was fair to admit the documents, as they had already been sent to Ms Wilagama and it was fair to CIMA to be able to evidence the steps it had taken to give her notice of the hearing.

Service and proceeding in absence (Rule 15)

3. Ms Wilagama having not attended the hearing, Mr C applied to the Committee to proceed with the hearing despite her non-attendance and lack of representation, pursuant to Rule 15(1) and 15(2).
4. Mr C submitted that the Committee could be satisfied that notice of the hearing had been served on Ms Wilagama in accordance with Rule 5. He referred the Committee to the bundle of documents admitted as further evidence, the notice of the hearing and the contact details in the hearing bundle which showed Ms Wilagama's contact details.
5. Mr C submitted that Ms Wilagama had been duly served notice of the hearing in accordance with the Rules. He submitted that to date, no reasons for her absence had been communicated to himself or to CIMA staff. Mr C submitted 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 Wilagama's absence.
6. 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 this was a decision to exercise with the utmost care and caution.
7. The Committee withdrew to consider the application in private. It was satisfied from the documents that notice of the hearing had been served on Ms Wilagama's registered email address. The notice set out the date, time and place (virtual) for the hearing. The email delivery receipts showed sending on 19 November 2024, which allowed for the required 35 days' notice. The Committee accepted that the link to the CIMA documents had also been sent on the same day as the notice of hearing. The Committee took

into account that the requirement of service is to demonstrate sending of notice. The Committee was satisfied that notice of the hearing had been duly served.

8. The Committee took into account that it had been informed that Ms Wilagama 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 took into account that she had been duly served with notice and had earlier been emailed by CIMA on several occasions concerning the allegations, but without response.
9. The Committee took into account that there was a public interest in the fair, expeditious and efficient disposal of proceedings. CIMA had prepared its evidence and served it in advance on Ms Wilagama. The Committee had no request before it to adjourn the proceedings and no reason to believe that, if adjourned, this would result in Ms Wilagama attending a future hearing. The Committee decided that, in all the circumstances it was fair and appropriate to proceed to hear the case.

The Charge

The Charge against Ms Wilagama provides 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. You used a pen during the Exam.
8. You attempted to conceal the pen from the Exam proctor.
9. Your conduct as set out in paragraphs 4-8 above either individually or collectively was dishonest.
10. Your conduct as set out at paragraphs 4-8 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 5.6.8.2 of the Exam Scheduling Terms and Conditions, which defines “accessing a pen” as amounting to a testing irregularity;
 - c. 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
 - d. The provisions of the CIMA Non-Disclosure Agreement, which clarify that “using a mobile phone” is a contravention of exam rules.

Misconduct allegations

11. 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);
 - ii. and/or 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 (8 pages), a Draft Statement of Case (3 pages) and a bundle of Supporting Documents (72 pages). The Committee admitted in addition the further evidence on service (6 pages).

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 Mr C.

Ms Wilagama did not attend the hearing and had not engaged with CIMA in the proceedings. There were no formal admissions to any of the factual charges as the burden of proving the facts lay on CIMA.

The Committee was provided with a copy of Ms Wilagama’s contact details, which showed that she was registered as a student with CIMA. The Committee found Charge 1 proved.

The Committee read Ms G’s witness statement, considered her exhibits and heard her oral evidence. The Committee considered Ms G a reliable and knowledgeable witness, whose evidence it accepted. 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 Wilagama and also a video recording of Ms Wilagama 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.

The Committee accepted Ms G’s evidence that Ms Wilagama had entered for the BA2 examination and that this had been her first examination taken with CIMA. The Committee was also provided with a copy of a ‘Chat log’ and video recording from the examination. The Committee found Charge 2 of the Allegations proved.

Ms G’s evidence was 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 followed that they had agreed to all the exam rules.

The Committee had found that Ms Wilagama had sat the BA2 examination, and it also had the evidence of the ‘Chat log’ and the video recording. The Committee found it to be a reasonable inference from Ms G’s evidence and exhibits that Ms Wilagama had agreed to each of the Rules in Charge 3(a), 3(b) and 3(c) and it found these charges proved.

Ms G stated that the video evidence exhibited demonstrated the sound of a phone camera at a number of timed points. The Committee considered the video itself. It was satisfied from the audio recording in the video at various points that the sound emitted by a mobile phone camera was audible. In addition, it noted that, at relevant points, Ms Wilagama was looking down from the screen to the point where a mobile phone might be.

The Committee took into account that it had been taken to the exhibited Professional and Regulatory Candidate Rules Agreement (“examination rules”). Paragraph 1 of these rules made clear that, amongst other things, mobile phones and pens were not permitted in the testing room. The Committee considered that the unauthorized possession of these items in breach of the rules raised an inference that they were not present for an innocent purpose.

The Committee took into account that the video showed at the beginning, that Ms Wilagama and greeter had discussed Ms Wilagama's possession of a mobile phone, which she had been asked to remove. In addition, it noted the 'Chat log' recorded the proctor ending the examination for accessing and/or using a prohibited item. Taking all the evidence into account, the Committee was satisfied on the balance of probabilities that Ms Wilagama had used a mobile phone during the exam.

The Committee took into account that the inference drawn was that the mobile phone had been used to take a picture. It considered that this was not for a technical issue. The Committee found Charge 4 proved.

The Committee noted that there was no reference either in the 'Chat log' or during the video to any request for approval from the Exam proctor to access the phone. The Committee therefore found Charge 5 proved.

The Committee considered that it was relevant that the video showed that the exam greeter had asked Ms Wilagama to remove the mobile phone from her view before the start of the exam. It also took into account that the video showed that the proctor had asked for the Ms Wilagama's confirmation and Ms Wilagama had stated that the mobile phone and her pen had been placed in another room.

The Committee noted that the mobile phone was held below the view of the proctor's camera at all times. When asked at a point to show the proctor her physical desktop, the mobile phone was not visible on it. The Committee found that it was a reasonable inference from all these facts that Ms Wilagama had attempted to conceal the mobile phone from the Exam proctor. The Committee found Charge 6 proved.

At around 1 hour and 21 minutes into the examination, the Committee noted that the video showed a discussion between Ms Wilagama and the Exam proctor. At that point Ms Wilagama showed her desktop, on which a pen was visible. Ms Wilagama showed the pen to the proctor online and confirmed that she had used it. The Committee took into account that the greeter had asked Ms Wilagama to remove her pen (and phone) at the start. Ms Wilagama had then stated that these were in another room. The Committee, bearing in mind that this also was a breach of the examination rules, inferred that Ms Wilagama had her pen for the purposes of using it in the exam and that she had used it. The Committee found Charge 7 proved.

Taking into account that Ms Wilagama had been asked to remove her pen, had confirmed that it was in another room and its presence was a clear breach of the examination rules, the Committee inferred that Ms Wilagama had attempted to conceal the pen from the Exam proctor. The Committee found Charge 8 proved.

The Committee heard submissions, and it accepted legal advice from the Legal Assessor that the test for dishonesty is that which is set out in *Ivey v Genting Casinos* [2017] UKSC 62. First, the Committee must decide Ms Wilagama's subjective knowledge or belief as to the facts. Then it had to decide whether ordinary decent people would regard her conduct as dishonest by their standards.

The Committee considered its findings in relation to Charges 4 to 8. It had found clear evidence that Ms Wilagama had been asked to and had confirmed the removal of her mobile phone and pen out of sight and into a different room. In spite of this, as the Committee found, Ms Wilagama had used her mobile phone during the exam for a non-technical issue (Charge 4), had not sought permission (Charge 5) had attempted to conceal the phone from the Exam proctor (Charge 6), all in breach of the examination rules. The Committee found that it could be inferred that Ms Wilagama knew that this had been in breach of the examination rules, and these had been deliberate acts. The Committee was clear that ordinary decent people would regard each of these acts as dishonest by their standards.

Likewise, as regards the use of a pen during the exam and its attempted concealment from the Exam proctor, which was also a breach of the examination rules, the Committee was satisfied that the use of the pen (Charge 7) and the attempted concealment (Charge 8) had been done by Ms Wilagama deliberately and in the knowledge that these were breaches of the examination rules. The Committee was also clear that ordinary decent people would regard each of these acts as dishonest by their standards.

The Committee considered that Ms Wilagama's actions, considered cumulatively as having in her possession and using for the purposes of the examination 'prohibited' materials, were dishonest conduct. The Committee found Charge 9 proved in respect of each of Charges 4 to 8, individually and cumulatively.

The Committee considered the terms of the Exam Scheduling Terms and Conditions, from which it read that using a mobile phone for non-technical issues was a testing irregularity, in paragraph 5.6.8.1. Also, it read that accessing a pen was a testing irregularity, pursuant to paragraph 5.6.8.2.

The Committee was satisfied that, on the basis of its findings on Charges 4, 5 and 6, there had been a breach of paragraph 5.6.8.1, and Charge 10(a) was proved. The Committee's findings in relation to Charges 7 and 8 constituted also a breach of paragraph 5.6.8.2, and Charge 10(b) was proved.

The Committee noted that the definition of 'personal items' in Rule 1 of the Pearson VUE Professional and Regulatory Candidate Rules Agreement included both mobile phones and pens. Rule 8 concerned seeking permission to access personal items which had been stored. The Committee took into account that Ms Wilagama had confirmed having put these items into another room. There was no evidence in the 'Chat log' or in the video recording that Ms Wilagama had sought permission. In addition, the 'Chat log' recorded that the examination had been terminated, due to access to or use of prohibited items.

The Committee was satisfied that Rule 8 had been breached. It found Charge 10(c) proved.

The Committee had found, in Charge 4, that Ms Wilagama had used a mobile phone during the examination. It noted the terms of the NDA stated that this was a contravention of the exam rules. It followed that there had been a breach of the rules applicable to the exam and the Committee found Charge 10(d) proved.

Decision on Misconduct

The facts having been found proved, the Committee considered the matter of misconduct. CIMA's Byelaws and Regulations define "misconduct" as "failure to comply with the Laws of the Institute"; or "conduct resulting in any conviction (or adverse finding by, or sanction or order of, or undertaking to, any tribunal or court or other body or authority) relevant to their membership or registration with the Institute.

In relation to the Charges, the Committee made the following findings.

Pursuant to CIMA's Disciplinary Rules 2020, 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 Wilagama had breached Rule 5.6.8.1 and 5.6.8.2 of the Exam Scheduling Terms and Conditions (Charges 10 (a) and 10 (b) above. It had found that Ms Wilagama had breached CIMA's NDA (Charge 10(d) above). Further, the Committee had found that Ms Wilagama had breached the Pearson VUE Professional and Regulatory Candidate Rules Agreement (Charge 10(c) above).

The Committee therefore found that Ms Wilagama 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 Wilagama.

The Committee considered that, in relation to her conduct in the use of the mobile phone during the exam for a non-technical issue (Charge 4), without having sought permission (Charge 5) and the attempt to conceal the phone from the Exam proctor (Charge 6), these actions breached both the Fundamental Principles of (i) Integrity and (ii) Professional Behaviour.

Likewise, as regards the use of a pen during the exam and its attempted concealment from the Exam proctor, which was also a breach of the examination rules, the Committee was satisfied that the use of the pen (Charge 7) and the attempted concealment (Charge 8) the Committee was satisfied that these breached both the Fundamental Principles of (i) Integrity and (ii) Professional Behaviour.

The Committee was also of the view that Charges 4 to 8 were individually and when considered cumulatively as a course of action breached both these Fundamental Principles. The Code of Conduct sets out that integrity requires an accountant to be straightforward and honest in all professional and business relationships. Professional Behaviour is explained as being "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.” Her conduct was not straightforward nor honest and members of the profession would not consider her to have been so. She had not demonstrated integrity. She would, or should, have known that breaching the exam rules and her conduct in trying to cover this up was conduct that did discredit the profession.

The Committee therefore found that the conduct of Ms Wilagama was not of a minor nature and was sufficiently serious as to amount to misconduct.

Mitigation and Sanction

Having found misconduct as alleged, the Committee went on to consider the questions of mitigation and sanction. In considering what sanction if any to impose, the Committee had regard to the Indicative Sanctions Guidance and to the advice of the Legal Assessor. It also had regard to the principle of proportionality and that the sanction imposed should be the least onerous suitable to reflect the seriousness of the misconduct.

The Committee took into account the following aggravating and mitigating factors. The Committee considered that this had been a dishonest course of action, in the possession and concealment of prohibited materials. Ms Wilagama 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 heard submissions from Mr C and an application for costs. It accepted the advice of the Legal Assessor that it must have regard to its findings as to fact, misconduct and the submissions made. The Committee was referred to, and had careful regard to, the Indicative Sanctions Guidance (2015). The Committee considered the Annexure giving examples of other sanctions disposals.

The Committee accepted the legal advice that it had to act proportionately and impose the least sanction which met the seriousness of the case. The Committee has also borne 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 were 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.

They addressed the sanctions starting with the least serious. The Committee considered that the case was too serious to take no action in response to the misconduct. It considered that the maintenance of proper exam processes is fundamental to the qualification process, which guarantees standards amongst the profession. In addition, dishonesty strikes at the core principles and values of 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. Similarly, it noted that Reprimand, or Severe Reprimand did not meet the seriousness of the case, in light of the serious 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. The Committee also did not think that the imposition of any conditions on Ms Wilagama’s registration as a student would be adequate.

The Committee decided that, in light of the seriousness of the case involving dishonesty on the part of Ms Wilagama, there was no other means of protecting the public and public confidence in the profession as a whole would be undermined if Ms Wilagama was permitted to remain on the register as a Registered Student and therefore no sanction less than cancellation of the Ms Wilagama’s student registration was proportionate.

The Committee directed the Cancellation of Ms Wilagama’s Student Registration.

The Committee determined that Ms Wilagama should contribute a sum of £4225.00 in costs.