

**FINANCIAL PLANNING ASSOCIATION OF AUSTRALIA**

**CONDUCT REVIEW COMMISSION  
DISCIPLINARY PANEL**

REGARDING: **SHYLESH SRIRANJAN**

DETERMINATION: **CRC 2016\_1**

PANEL: Mr M Vincent, Acting Chair  
Ms L Palmer CFP  
Mr M Chalmers CFP

DATE OF DETERMINATION: 19 December 2016

CATCHWORDS: *Code of Professional Practice* – Code of Ethics – Ethics Principle 5: Professionalism – breach – non-compliance with appropriate rules – failure to behave with dignity – failure to show respect to fellow professionals – failure to enhance and maintain the profession’s public image – failure to enhance or maintain ability of profession’s public image to serve the public interest – cheating in exam – swapping examination papers

*Disciplinary Regulation 2011* – Academic Misconduct – cheating in exam – breaching exam rules – swapping examination papers

*Disciplinary Regulation 2011* – sanction – expulsion

CASES CITED: *Re A Member CRC 2012\_1*  
*Re Paul Florence CRC 2011\_3*

DATE OF HEARING: 16 September 2016

PLACE MADE: Sydney

APPEARANCES: Mr M Murphy for the FPA  
Mr Sriranjana in person

## DETERMINATION

1. The Panel decides:

- (a) Breach of Ethics Principle 5 of the Code of Ethics of the *Code of Professional Practice* is proven. Mr Sriranjana:
  - (i) failed to comply with appropriate rules;
  - (ii) failed to behave with dignity;
  - (iii) failed to show respect to his fellow professionals;
  - (iv) failed to enhance and maintain the profession's public image; and
  - (v) failed to enhance or maintain the ability of profession's public image to serve the public interest;in that he used information obtained from another exam candidate during a CFP Certification exam, by means of swapping exam papers.
  
- (b) It is proven that Mr Sriranjana committed Academic Misconduct of cheating in an exam within the meaning of sub-clauses 212 a) iii and b) ii of the *Disciplinary Regulation 2011*, in that he used information obtained from another exam candidate during a CFP Certification exam, by means of swapping exam papers.
  
- (c) Mr Sriranjana is expelled from membership of the FPA.

[signed]

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Mr M Vincent, Acting Chair  
Ms L Palmer CFP  
Mr M Chalmers CFP

## **THE PANEL'S REASONS FOR ITS DETERMINATION**

### **[1] THE NATURE OF THE DETERMINATION AND REASONS**

#### **[1.1] What the Determination is about**

[1.1.1] The Determination decides the outcome of a disciplinary hearing that has been held to inquire into allegations that Mr Sriranjana engaged in conduct in breach of the FPA's *Code of Professional Practice ("Code")* and *Disciplinary Regulation 2011*.

#### **[1.2] The purpose of these Reasons**

[1.2.1] The purpose of these Reasons is to state the reasons for which the Panel has made the Determination.

#### **[1.3] Who has made the Determination and Reasons**

[1.3.1] The Determination and Reasons have been made by a Disciplinary Panel ("Panel") of the FPA's Conduct Review Commission ("Commission"). The Commission is established under the FPA Constitution and the FPA's *Disciplinary Regulation 2011* to review and regulate the conduct of FPA members.

[1.3.2] Members of the FPA, when commencing or renewing their membership, are bound by the Constitution and agree to be bound by any regulations made by the FPA Board. Such regulations include the *Code* and the *Disciplinary Regulation*.

### **[2] THE DISCIPLINARY PROCEEDINGS**

#### **[2.1] How the disciplinary proceedings came about**

[2.1.1] On 11 November 2015 an FPA investigator prepared a report to the Head of Professional Designations in respect of an alleged academic misconduct investigation conducted pursuant to the FPA's Academic Misconduct Policy. The matter was then considered by the Professional Designations Committee, which issued a combination of penalties to Mr Sriranjana and another person. The Committee also referred the matter to the FPA's Professional Accountability Department.

[2.1.2] On 12 February 2016 the General Manager, Professional Standards, authorised the making of a complaint by the FPA under the *Disciplinary*

*Regulation*. The complaint was investigated. A Notice of Disciplinary Breach was issued on 24 June 2016.

## [2.2] **The case to answer**

[2.2.1] The Notice of Disciplinary Breach alleged that whilst sitting the Certified Financial Planner Certification exam on 13 October 2015, Mr Sriranjana relied upon information provided by another candidate to answer exam questions. The Notice alleged that the conduct amounted to one breach of the *Code* and one breach of the *Disciplinary Regulation*, namely:

- Breach of Ethics Principle 5 – Professionalism – of the Code of Ethics of the *Code* in that the member failed to comply with appropriate rules, failed to enhance and maintain the profession’s public image, and failed to enhance or maintain the ability of the profession’s public image to serve the public interest.
- Breach of clause 212 a) iii and b) ii of the *Disciplinary Regulation 2011* in that the member cheated in relation to an exam by breaching the exam rules.

[2.2.2] Mr Sriranjana disputed the allegations in the Notice. The Chair of the Commission decided that the disciplinary proceedings should proceed to hearing before a Panel.

## [2.3] **The hearing**

[2.3.1] The proceedings were heard on 16 September 2016.

[2.3.2] At the conclusion of the hearing, a timetable was set for the parties to provide additional material to the Panel. After that material had been provided, the Panel contacted the parties advising that it appeared appropriate that the Panel receive further evidence, and requested the FPA make arrangements to seek that evidence. Following the receipt of further material pursuant to the Panel’s request, the parties then made brief submissions on that additional material.

## [3] **THE CODE**

### [3.1] **What the *Code* represents**

[3.1.1] As stated in its Introduction, the *Code* is a form of professional regulation and “is the key document detailing the obligations of FPA members in the financial planning profession.”

[3.1.2] It is intended to operate alongside government regulation and also inform licensee compliance requirements.<sup>1</sup> It is designed to reflect the perspectives of members' peers and other relevant professionals as to professional practice in financial planning.<sup>2</sup>

[3.1.3] The *Code* is thus the primary vehicle for professionalising conduct of those financial planners who are FPA members. The *Code* observes that professionalism "is a measure of clear expectations of professional conduct, individual commitment to those obligations and preparedness to be held accountable by peers and the community".<sup>3</sup>

[3.1.4] As stated in its Introduction, the *Code* applies to all services provided by a member in their professional capacity; not necessarily limited to client relationships, but potentially extending to dealing with other members of the profession, other professionals and third parties.<sup>4</sup>

[3.1.5] The *Code* contains three enforceable components:

- The Code of Ethics
- Practice Standards
- Rules of Professional Conduct.

### [3.2] **The Code of Ethics**

[3.2.1] As stated above, the disciplinary proceedings allege a breach of the Code of Ethics.

[3.2.2] The Code of Ethics is described in the *Code* as follows:

The Code of Ethics is the top layer of professional regulation.

It establishes the ethical foundation for the other FPA standards of professional conduct including Practice Standards and Rules of Professional Conduct. ...

[3.2.3] The eight principles in the Code of Ethics serve as minimum benchmarks for professional behavior.<sup>5</sup>

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<sup>1</sup> *Code*, Introduction, page 2.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> At page 3.

<sup>5</sup> At page 6.

[4] **THE ISSUES FOR THE PANEL'S DETERMINATION**

[4.1] The issues arise from the cases to answer stated in the Notice of Disciplinary Breach.

[4.2] The issues are:

- Whether Mr Sriranjana obtained and used information from another student during his CFP Certification exam.
- If Mr Sriranjana obtained and used information from another student during the exam, whether Mr Sriranjana thereby committed a breach of Ethics Principle 5.
- If Mr Sriranjana obtained and used information from another student during the exam, whether Mr Sriranjana thereby committed Academic Misconduct of cheating in an exam in breach of clauses 212 a iii) and b) ii of the *Disciplinary Regulation 2011*.
- If the Panel finds one or more breach to have occurred, whether the balance of interests lies with assisting and/or sanctioning Mr Sriranjana.

[5] **WHETHER MR SRIRANJANA DURING AN EXAM OBTAINED ACCESS TO AND USED ANOTHER STUDENT'S EXAMINATION PAPER**

[5.1] Mr Sriranjana sat the Certified Financial Planner certification exam on 13 October 2015. He was one of 121 candidates sitting the exam that day. It was his third attempt. He sat the exam at the Melbourne examination venue. The exam comprised 70 multiple choice questions.

[5.2] Statistical analysis was subsequently applied to all the candidates' responses. A similarity analysis was conducted: this is done by first listing each candidate's response to each question; then, each candidate's responses are compared with those of each other candidate. Some 7260 comparisons were made among the 121 candidates.

[5.3] The similarity analysis threw up a result whereby two particular candidates had answered the same questions incorrectly and chosen the same incorrect answer to questions, to such a degree that the result was 7.32 standard deviations distant from the mean result. (With a normal curve 99.99% of results would be expected to be within 4 standard deviations of the mean).

[5.4] Such similarity analysis is correlative only: it only describes the likelihood that something has occurred by chance.

[5.5] The result having been noted, further enquiries were made which disclosed that the two candidates had attended the same exam venue; and that one had been seated behind the other. As expressed in the Similarity Report, "The probability of the similarity of results when multiplied by the probability of

the candidates sitting at the same venue sitting behind one another makes the likelihood of these events occurring by chance very remote”.

[5.6] However, the Report also stressed that no supervisor reported anything unusual occurring between the candidates, and there was still the possibility that the similarity occurred by chance.

[5.7] One of the two candidates was Mr Sriranjana.

[5.8] The examination was for 3 hours, with 15 minutes reading time prior.

[5.9] A number of students, including Mr Sriranjana and the other candidate, were given an extra hour to sit the exam. The extra hour was given to those re-sitting the exam. This was known to the candidates prior to the exam. Those candidates being given the extra hour were seated at a line of desks to one side of the examination room. Candidates did not move seats between the first 3 hours and the additional hour. Mr Sriranjana sat immediately in front of the other candidate. There was a difference in recollection between Mr Sriranjana and the exam supervisor as to the space between the tables: Mr Sriranjana said there was room for a supervisor to walk between his desk and that of the other candidate; the supervisor, who was not prepared to make themselves available to the Panel, had said in a telephone conversation with the FPA that there was insufficient room to pass between tables in a row.

[5.10] The FPA proposed to the Panel that there had been a swapping of books between the two candidates. The FPA submitted it was not possible to establish there was no opportunity and that while the FPA did not suggest the seating arrangements were known in advance, there was both intent and opportunity.

[5.11] Information gained from the exam supervisors was to the effect that nothing had been noticed, but that particularly during the changeover between normal and extra exam time, there was some disruption as most students left the room. It was suggested that exam supervisors were pre-occupied with the exiting students.

[5.12] Mr Sriranjana confirmed to the Panel that he did know the other candidate; they studied together preparing for the exam. Mr Sriranjana posited that their joint preparation might have led them to have a similar approach to questions.

[5.13] The Panel had available the examination papers for each of the two candidates. For Mr Sriranjana, each question<sup>6</sup> in the booklet bore some form of annotation: usually circling the letter of a choice made, and/or writing and circling a letter at the top of a question. Often any options excluded were marked with a cross, and comments and workings were made alongside a question. The examination paper of the other candidate was also marked, however there were obvious stylistic differences.

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<sup>6</sup>Bar two questions.

[5.14] The Panel also has available the candidate's answer sheets. They were to be completed by filling in pencil a response circle. If an answer was then changed, the filled circle was to have a cross put through it, and the newly chosen circle filled.

[5.15] Mr Sriranjana had changed answers to 26 questions on his answer sheet. The investigators had put to Mr Sriranjana that he had relied upon answers obtained from the other candidate to make some or all of those changes. In response Mr Sriranjana prepared a schedule explaining how he had come to make the changes, annexing material he said he relied upon.

[5.16] At the hearing the Panel asked Mr Sriranjana questions about the manner by which he went about answering the exam questions. He said he would read through each question, mark his preferred answer on the answer sheet, then consult his notes and maybe then make an alteration on the answer sheet. He would then move to the next question. Occasionally he would go back to check an earlier question. By this process he had answered about 50 questions at the end of 3 hours. Answering the last 6 or so questions was rushed as the last hour ran towards a close.

[5.17] The Panel asked Mr Sriranjana to go through a number of the questions where he had changed his response on the answer sheet and explain his reasoning that led to the change.

[5.18] The Panel finds most of Mr Sriranjana's explanations unconvincing and implausible as to why he changed his answers to questions. (Most explanations make so little sense they also, unfortunately, give the Panel little confidence as to Mr Sriranjana's capacity to perform work as a financial planner. However, the extent to which Mr Sriranjana may or not be competent is not a question to be enquired into in these proceedings).

[5.19] Towards the end of the questions that the Panel was taking Mr Sriranjana through, it was put to him that there appeared to be a change in the style of annotations at around question 56. It was put to him the annotations in the other candidate's book also appeared to change around that point and appeared to resemble Mr Sriranjana's style. He denied swapping papers.

[5.20] Mr Sriranjana submitted to the Panel that circumstantial evidence alone did not mean cheating occurred.

[5.21] At the end of the hearing the Panel asked the parties to forward to it information concerning the education policy that applied to Mr Sriranjana, as there had been some uncertainty about that. The documents subsequently made available showed that the policy of Mr Sriranjana's employer that was applicable to Mr Sriranjana at the time he sat the exam in October 2015 stated that Mr Sriranjana was required to obtain his CFP designation by 2017.

[5.22] Also subsequent to the hearing, the Panel considered it appropriate to have expert opinion sought as to whether handwriting in Mr Sriranjana's examination book and the examination book of the other candidate may have been made by the same person.

[5.23] On 11 November 2016 a report titled "Preliminary Advice" from Ms Andrea Devlin, forensic document and handwriting examiner, was received by the Panel. Ms Devlin had available to her pages from Mr Sriranjana's examination book, and specimens of Mr Sriranjana's handwriting.<sup>7</sup> In a section of the report headed "Preliminary Findings", Ms Devlin said that she concentrated on the numerical entries that had been made, and had concluded, on a preliminary basis, that there was evidence supporting a proposition that the numerical entries were not written by the person who wrote Mr Sriranjana's specimens. She said: "There is evidence supportive of a proposition that the questioned numerical entries were written by a person other than the writer of the specimens attributed to Shylesh Sriranjana".

[5.24] A table accompanying the report listed and explained the conclusion terminology.<sup>8</sup>

[5.25] The FPA submitted that the report was consistent with the hypothesis put by it to the Panel; and with the concerns expressed by the Panel that led to the engagement of the expert. The FPA noted there were a number of other "lesser" conclusions present on the table that could have been arrived at.

[5.26] Mr Sriranjana submitted the samples used were limited by the quality of the copies, and comparison was precluded since writing in pencil was being compared to writing in pen. Mr Sriranjana also submitted that the conclusion should be found to fall into a different category than the one here recounted by the Panel.

[5.27] The Panel notes that the opinion of Ms Devlin is highly qualified; in the Panel's view it would be unsafe to rely on that opinion, in isolation, to prove a sharing or swapping of exam papers. However, the Panel does not accept Mr Sriranjana's submissions as to the report: the expert expressly noted the limitations as part of the basis by which she came to her view; and it is not the task of the Panel to substitute a different category for the one that the opinion falls within.

[5.28] In the Panel's view, a combination of the following factors makes it more probable than not that Mr Sriranjana relied on information obtained from the

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<sup>7</sup> Note that the Preliminary Advice from Ms Devlin addressed only part of what the Panel had considered it appropriate to have expert opinion regarding.

<sup>8</sup> The relevant explanation stated: "Significant differences were found between the questioned and specimen writings/signatures and I have found no significant evidence to connect the writer of the specimens with having written the questioned entry, but there are limitations which preclude the expression in probability terms. This often occurs when the amount of writing in question is quite small and/or when the questioned document is a reproduction. Please note this conclusion is far from a certain one."

other candidate, and that this occurred by means of swapping of examination papers:

- The extremely unlikely statistical chance of Mr Sriranjana and the other candidate recording the same number of incorrect responses to exam questions;
- The adjacent seating of the two candidates, who had spent time together preparing for the exam;
- That Mr Sriranjana was subject to a requirement by his employer to complete his CFP training by 2017;
- That the exam of 11 October 2015 was his third, and final, attempt to sit the exam to obtain the qualification;
- That explanations given by Mr Sriranjana as to how he came to change answers on his answer sheet were unconvincing and implausible;
- The preliminary opinion of the document examiner that there was evidence supporting the proposition that someone other than Mr Sriranjana wrote on his examination paper.

[6] **WHETHER MR SRIRANJANA COMMITTED A BREACH OF ETHICS  
PRINCIPLE 5 - PROFESSIONALISM**

[6.1] Professionalism is the competence or skill expected of a professional.<sup>9</sup>

[6.2] The expectation is that of others: peers, clients and the public. A planner, acting professionally, needs to find ways to calibrate their conduct against the expectations of others. The *Code* provides guidance. Professionalism is a core concept of being a professional; it should become second nature.

[6.3] Professionalism is not defined in Ethics Principle 5: rather, the Principle states conduct that is required in order for a planner to be acting professionally.

[6.4] Ethics Principle 5 states:

**Principle 5: Professionalism**

**ACT IN A MANNER THAT DEMONSTRATES EXEMPLARY PROFESSIONAL  
CONDUCT**

Professionalism requires behaving with dignity and showing respect and courtesy to clients, fellow professionals and others in business-related activities, and complying with appropriate rules, regulations and professional requirements. Professionalism requires the financial planner, individually and in cooperation with peers, to enhance and maintain the profession's public image and its ability to serve the public interest.

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<sup>9</sup> *Re A Member CRC 2012\_1* and *Re Paul Florence CRC 2011\_3*.

[6.5] The Principle of Professionalism sets a high bar – it requires *exemplary* professional conduct.

[6.6] In Ethics Principle 5 there are separate sets of matters upon which the professionalism of conduct is assessed. The first set relates to the nature of the conduct; the second set relates to the consequences of the conduct.

[6.7] The nature of the conduct required is:

- Interpersonal/social requirements of comporting with dignity, respect and courtesy; and
- A formal or legal requirement of compliance.

[6.8] Consistent with the fact that a planner will have to deal with other people in a wide range of circumstances, the required professionalism in dealings with others is expressed broadly to cover all business-related activities; not just doing things that might be considered “professional” work – such as advising and delivering professional services.

[6.9] Mr Sriranjana’s conduct in his CFP certification exam breached the requirement that he complied with appropriate (in the sense of applicable) rules. Additionally, his conduct in the exam breached the requirements to behave with dignity and show respect to his fellow professionals, as to cheat is to fail to act honourably or be worthy of respect; nor does it show respect to the standing of his peers. It is not an action others would expect of a competent, skilled professional.

[6.10] The consequences by which the professionalism of conduct is to be assessed are:

- enhancing and maintaining the profession’s public image; and
- enhancing and maintaining the ability of the profession’s public image to serve the public interest.

[6.11] Both yardsticks relate to the public image of the profession. The “public image” is the impression presented to the public, by appearances and actions.

[6.12] Instances of cheating in Certification exams detract from the profession’s public image. Cheating by its nature cannot enhance or maintain the profession’s public image.

[6.13] The requirement to “enhance and maintain” is a positive duty. It is a stronger duty, and one that potentially covers more situations in a planner’s work, than the ethical Standard of Professionalism<sup>10</sup> that appeared in the FPA’s *Professional Standards 1997*. The 1997 Standard required: “Members shall

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<sup>10</sup> Code of Ethics Standard 6.

ensure their conduct does not bring discredit to the financial planning profession”.

[6.14] The public interest is the common interest in matters that have a public aspect: relevantly, the standing of the profession and the public’s confidence in its members.

[6.15] The integrity of CFP Certification is a matter of public interest.

[6.16] Cheating in exams compromises the ability of the profession’s public image to serve the public interest; where cheating occurs the standing of the profession and the public’s confidence in its members is reduced.

[6.17] The Panel finds the breach of the ethical principle of Professionalism proven.

## **[7] WHETHER MR SRIRANJAN COMMITTED A BREACH OF CLAUSE 212 OF THE DISCIPLINARY REGULATION**

[7.1] Part 17 of the *Disciplinary Regulation 2011* concerns Academic Misconduct. Academic Misconduct is defined as including “any act or omission by a Member in Breach of the FPA Academic Progress and Disciplinary Policy as varied from time to time”,<sup>11</sup> including cheating.

[7.2] “Cheating” is defining as meaning, amongst other things, “in relation to an exam, breaching the exam rules for the conduct of the exam”.<sup>12</sup>

[7.3] The Notice of Disciplinary Breach stated that the exam rules did not allow for any form of communication or exchange of information between candidates during an exam, and that exam rules had been brought to the attention of Mr Sriranjana by way of the Policy,<sup>13</sup> the CFP Certification Assessment Handbook, the examination announcements, and the fact that he had sat for the exam on two prior occasions. Neither the Academic Misconduct Policy nor the CFP Certification Assessment Handbook was put before the Panel. The “Examination Announcements” document relevantly said it was to be announced that candidates were not to talk to other candidates during reading time and until the end of the examination.

[7.4] Irrespective of the limited documentary material before the Panel as to what exam rules were in place, the Panel considers “exam rules” in clause 212 is a term that includes any rules that are implied by the circumstances. Exam rules are not limited to whatever rules are in writing.

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<sup>11</sup> Clause 212 a) *Disciplinary Regulation*. As stated above, the current relevant policy is the Academic Misconduct Policy.

<sup>12</sup> Clause 212 b) ii *Disciplinary Regulation*.

<sup>13</sup> Presumably, the FPA’s Academic Misconduct Policy.

[7.5] It was implied by the circumstances under which the Certified Financial Planner certification examination was undertaken, that each student was to do his or her own work independently. So much should go without saying. Mr Sriranjana did not suggest otherwise.

[7.6] The Panel has found that Mr Sriranjana relied upon information provided by another candidate to answer exam questions, following an exchange of exam papers. The Panel finds that such conduct breached the exam rules, and was thus “cheating”, within the meaning of sub-clause 212 b) ii.

[7.7] Accordingly, the Panel finds Mr Sriranjana has engaged in Academic Misconduct within the meaning of sub-clause 212 a) iii of the *Disciplinary Regulation 2011*. The Panel finds the allegation of Academic Misconduct proven.

## [8] THE SANCTION

[8.1] Where a Panel finds a breach proven, the enquiry of the Panel into the member’s conduct becomes one of determining whether the balance of the interests of the public, the financial planning profession and the community lie with assisting the member to understand, correct and rehabilitate any conduct found to be in breach, and/or sanctioning the member for that conduct for the protection of the community or the profession.<sup>14</sup>

[8.2] The FPA submitted that if the Panel was to find the alleged breaches had occurred, Mr Sriranjana should be expelled from the FPA. There would be no confidence in Mr Sriranjana’s future conduct given his denials.

[8.3] Mr Sriranjana has requested the Panel to allow him to re-sit the exam, on the basis that the Similarity Report had recommended that the two candidates be asked to re-sit the paper.<sup>15</sup> However, as confirmed by the author of the Similarity Report, Mr Moore, in his evidence to the Panel, the recommendation was made as a means to rule out or confirm the chance element of the similarity between the two sets of answers. Accordingly, the recommendation was not made with any knowledge of Mr Sriranjana’s circumstances (which include that it was his third and final attempt at the exam), or consideration of the various interests to be weighed.

[8.4] The Panel doubts it would have the power to allow Mr Sriranjana to re-sit the exam. It does not appear to fall within any type of the sanctions listed in the *Disciplinary Regulation*.<sup>16</sup>

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<sup>14</sup> Clause 111 *Disciplinary Regulation 2011*.

<sup>15</sup> The precise recommendation had been that both candidates be asked to re-sit the same exam paper before the release of results.

<sup>16</sup> Schedule B.

[8.5] However, in the circumstances the Panel would not wish to do so. The Panel agrees with the FPA that it is appropriate to sanction Mr Sriranjana, and that the appropriate sanction is expulsion.

[8.6] Expulsion is appropriate for the protection of the profession: particularly its public standing and the confidence of the public in its members.

[8.7] Given that Mr Sriranjana has denied cheating, but the Panel has found otherwise, the Panel sees no scope for the Panel to put in place a scheme to assist Mr Sriranjana understand, correct or rehabilitate his conduct.

[8.8] The Panel agrees with Mr Sriranjana's submission that he has acted in a professional manner by providing timely responses during the course of investigation and the disciplinary process. Mr Sriranjana has also departed himself with respect and courtesy to those involved in the investigation and hearing. However, those instances of professionalism in behaviour are greatly outweighed by the findings the Panel has made as to the breach of professionalism.

END OF REASONS