

## **Disciplinary Panel Hearing**

**Case of**  
**Emmanuel Ndlovu**  
**South Africa**

**On**  
29 October 2019 via telephone conference

**Chairman**  
Gillian Seager

**Members**  
Justin Mason, Surveyor  
Christopher Pittman, Surveyor

**Legal Assessor**  
Fiona Barnett

## **HEARING ON BASIS OF WRITTEN REPRESENTATIONS**

### **Service**

1. The Panel had before it a Service Bundle, which included a witness statement from Maria Choudhury, RICS Regulatory Tribunal Executive, dated 25 October 2019. Ms Choudhury confirmed that Notice of this hearing dated 20 September 2019 was sent to Mr Ndlovu by email and by post on that date, to the preferred addresses held by RICS on their register of members. The Panel was provided with a delivery receipt for the email which showed that it was received on 20 September 2019. The Track and Trace document showed that delivery of the postal item was attempted on 18 October 2019.
2. The Panel was therefore satisfied that the requisite period of notice had been given in accordance with Rule 43(a) Disciplinary, Registration and Appeal Panel Rules, 1 April 2009, as amended from 1 January 2017, (the Rules) and that the notice was properly served.
3. The notice of hearing sent to Mr Ndlovu expressly referred to this hearing as a “hearing by way of written representations” and stated that should he wish to request

an oral hearing, he should do so within seven days. There has been no response from Mr Ndlovu, however, given that the notice was properly served, Mr Ndlovu should be aware of the hearing and aware that it will take place in his absence on the papers unless he requested otherwise. The Panel therefore decided that it would be fair and in the public interest to deal with this case in his absence, without an oral hearing, on the basis of the written representations before it.

### **The Charge:**

The charge against the Member is: -

'Between 1 January 2018 and 1 February 2019 you have failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) in that you have not completed and recorded, or caused to be recorded, at least 20 hours of CPD on the RICS CPD portal.

### **Contrary to Rule 6 of the Rules of Conduct for Members 2007 version 6'**

The Member is therefore liable to disciplinary action under Bye-law 5.2.2

### **Response**

4. There was no listing questionnaire from Mr Ndlovu.

### **Background**

5. RICS' requirements in respect of CPD are set out in the document 'CPD Requirements and obligations'. They include requirements that 'All members must undertake a minimum of 20 hours CPD each calendar year (January to December)', of which at least 10 hours must be formal CPD. Members must record their CPD activity online by 31 January. Members are required to log CPD via the RICS portal.
6. It is alleged that Mr Ndlovu did not complete the requisite number of CPD hours for 2018 and record these via the RICS portal by 31 January 2019.

### **Evidence**

7. The Panel had before it the RICS solicitor's bundle of documents. It reminded itself that it must only refer to the documents which were relevant to the particular stage of the proceedings being considered.

### **Findings of fact**

8. In reaching its decision on the facts, the Panel reminded itself that where the facts are in dispute, the burden of proof rests with RICS and that the standard of proof applicable in these proceedings is the civil standard. This means that the Panel must not find a fact proved unless it is satisfied, on the balance of probabilities that it is true, i.e. that it is more likely than not to have occurred as alleged.

9. The Panel considered the statement from Joe Poole, RICS CPD administrator, and the CPD printouts within the RICS bundle relating to Mr Ndlovu's CPD activity.
10. The Panel accepted the evidence from Mr Poole who confirmed that Mr Ndlovu did not have any concessions granted for the 2018 year, and that his CPD for 2018 was 0.
11. The Panel therefore found the factual allegation proved.
12. The Panel was satisfied that Mr Ndlovu's failure to complete and record his CPD online amounted to a breach of Rule 6 of the Rules of Conduct for Members Version 6.

### **Liability to disciplinary action**

13. The Panel's view was that Mr Ndlovu's failure to comply with the CPD requirements and his breach of Rule 6 of the Rules of Conduct for Members amounted to a serious falling short of his professional obligations. It is the duty of a RICS member to ensure that he is aware of the CPD requirements and to comply with them. The CPD requirements are designed to ensure consistent standards within the profession, that individuals maintain up to date knowledge in their area of expertise and that members demonstrate this by the completion of a record at RICS. The purpose of the record is so that RICS can monitor compliance. The failure to fulfil professional obligations is likely to undermine public confidence in the profession. In the circumstances, the Panel was satisfied that Mr Ndlovu was liable to disciplinary action.

### **Submissions**

14. RICS submitted in their written representations that this was Mr Ndlovu's third breach of the RICS CPD requirements. His CPD compliance was as follows:

2013 – 41 hours  
2014 – 158  
2015 – 0  
2016 – 16  
2017 – 0 (lapsed membership)  
2018 - 0

15. RICS stated that a Caution was issued for his failure to comply in 2015, and a Caution and Fine was issued for his failure to comply in 2016. The Panel was informed that Mr Ndlovu has not paid the fine imposed in 2017 for his 2016 breach, but that his membership fees for 2017, 2018 and 2019 have been paid.

### **Decision as to sanction**

16. The Legal Assessor advised the Panel that the purpose of a sanction is to protect the public, to safeguard the reputation of the profession and to declare and uphold

proper standards of conduct and behavior. Further, any sanction imposed must be proportionate. If the Panel is minded to impose a sanction, it must consider the sanctions in order of severity, starting with the least severe. It must satisfy itself that any sanction it imposes is the minimum necessary to meet the public interest.

17. The Panel had regard to the RICS Sanctions Policy, version 7. This states, at paragraph 21.1, that there is a presumption of expulsion for a third breach of Rule 6 of the Rules of Conduct for Members within 10 years of receipt of a caution for breach of that rule. Nevertheless, it was incumbent upon the Panel to consider and balance any aggravating and mitigating factors, and to approach the sanctions in ascending order of seriousness, as stated above.

18. The Panel found the following aggravating factors:

- The failures to comply with RICS CPD recording requirements were repeated. This was Mr Ndlovu's third breach of his CPD obligations.

19. The Panel had received no information from Mr Ndlovu and could find no evidence of any mitigation in the papers before it.

20. In making its decision on sanction, the Panel reminded itself that RICS is a professional membership organisation which sets standards for its members as a condition of membership. From the inception of the compulsory recording of CPD online, RICS has publicised its policy on sanctions for non-compliance. It is not difficult to record CPD online. Compliance is not optional.

21. The Panel first considered whether to impose a sanction and concluded that the matters were too serious for no sanction to be imposed.

22. It next considered a Caution, and Reprimand, in ascending order (Caution first) and decided that neither a Caution nor Reprimand would be sufficient to mark the serious nature of the breach. The Panel was also of the view that this was not a case in which undertakings would be appropriate.

23. The Panel then considered whether to impose a fine. It decided that a fine would not be an appropriate sanction because in the absence of a response from Mr Ndlovu, the Panel was not persuaded that a fine would encourage compliance nor would it be sufficient to uphold the public interest.

24. The Panel decided that conditions imposed on Mr Ndlovu's RICS membership would also not be an appropriate and proportionate sanction. There was no evidence that Mr Ndlovu would be willing to comply with conditions.

25. The only remaining sanction available to the Panel was Expulsion. The Panel was mindful that Mr Ndlovu had logged CPD hours in previous years, in particular, he had logged 158 hours in 2014, so he was clearly aware of the need to complete and log CPD. There was no information from Mr Ndlovu to explain why he had not completed/logged CPD for 2018. This was his third breach of CPD within 10 years of

a Caution. Given the repeated nature of the breach and the absence of mitigation, the Panel decided, having balanced Mr Ndlovu's interests with the public interest, that Expulsion was the only sanction which was sufficient to protect the public and uphold the wider public interest. It therefore decided that he should be expelled from membership of RICS.

### **Publication**

26. The Panel considered the guidance as to publication of its decisions set out in Supplement 3 to the Sanctions Policy. It bore in mind that there is a presumption in favour of publication of decisions of the Disciplinary Panel.

27. The Panel therefore ordered that this decision should be published in Modus and on the RICS website, in accordance with the provisions of Supplement 3.

### **Costs**

28. RICS requested costs in the sum of £400.00

29. In the absence of any response from Mr Ndlovu, the Panel decided to make a costs order of £400 to be paid by Mr Ndlovu to RICS.

### **Appeal Period**

30. Mr Ndlovu has 28 days from service of the notification of this decision to appeal this decision in accordance with Rules 58 and 60 of the Rules.

31. In accordance with Rules 59 and 60 of the Rules, the Honorary Secretary of RICS has 28 days, from service of the notification of this decision, to require a review of this Decision.