

## ROYAL INSTITUTION OF CHARTERED SURVEYORS REGISTRATION PANEL HEARING

### Case of

**Mr Ethige Silva ICIOB, MInstCES [1199333]  
Srilanka**

### On

Tuesday 31 March 2020 at 10.00

### At

Oral hearing via Skype for Business conference call

### Chairman

Mr Ian Hastie (Surveyor Chair)

### Members

Ms Catherine Brown (Lay Member)

Mrs Ruth Brutnall (Lay Member)

### Legal Assessor

Ms Rosemary Rollason

### Applicant

Mr Ethige Silva was not present or represented

### RICS Representative

Mrs Kelly Sherlock

### Hearing Officer

Miss Maria Choudhury

The Panel convened to consider the application of Mr Ethige Silva for re-admission as a member of RICS following his disciplinary expulsion on 6 November 2018.

## **Preliminary Matters**

### **Service**

1. Mr Silva, the applicant, was not present at the hearing and was not represented.
2. The Panel was satisfied that notice of the hearing had been sent to Mr Silva by a letter dated 20 January 2020, sent to the most recent postal and email addresses known to RICS. The letter gave notice of the hearing date and the venue and complied with all the requirements of Rule 23 of the Disciplinary, Registration and Appeal Panel Rules (January 2009) (“the DRAPRs”).
3. The Panel had sight of the witness statement of Miss M Choudhury, RICS Regulatory Tribunal Executive, dated 9 March 2020. She produced a Royal Mail Track and Trace document, confirming the posting of the letter. She also produced the confirmation of delivery of the email to Mr Silva’s email address.
4. The Panel had sight of correspondence from RICS to Mr Silva noting that in September 2019, after the date of the submission of his application for re-admission, he had contacted RICS to update his postal and email addresses. It was to these addresses that the notice of hearing and subsequent correspondence had been sent.
5. The Panel was satisfied that there had been proper service of the notice of hearing in accordance with Rule 23 of the DRAPRs.

### **Application to proceed in absence**

6. Mrs Sherlock, on behalf of RICS, informed the Panel that there had been no communication from Mr Silva, other than the updating of his address details, since the submission of his application dated 5 August 2019.
7. Mrs Sherlock explained that, in addition to the Notice of Hearing of 20 January 2020, she had sent a further email to Mr Silva on 3 March 2020. This repeated the hearing details and included further copies of the hearing documentation. The email also reminded Mr Silva that the onus was upon him in this matter and urged

him to indicate whether he would attend the hearing. There had been no response from Mr Silva.

8. Mrs Sherlock submitted the Panel should exercise its discretion to proceed in the absence of Mr Silva and that an adjournment would serve no useful purpose as Mr Silva was not engaging with RICS.
9. At the beginning of the hearing, the hearing officer, Miss Choudhury, called both telephone numbers held for Mr Silva. One went directly to voicemail and the other cut off immediately. She also sent a further email, but there was no response.
10. The Panel considered the submissions on behalf of RICS and accepted the advice of the Legal Assessor. The Panel was referred to the guidance from the cases of *R v Jones (Anthony)* [2004] 1 AC 1HL and *GMC v Adeogba* and *GMC v Visvardis* [2016] EWCA Civ 162. Applying that guidance, the Panel was careful to remember that its discretion to proceed in absence is not unfettered and must be exercised with the utmost caution and with the fairness of the hearing at the forefront of its mind.
11. The Panel was mindful that this was Mr Silva's application for re-admission. It was satisfied that RICS had made all reasonable efforts to inform Mr Silva of the hearing and to engage with him. There was no indication that Mr Silva sought an adjournment of the hearing for any reason. The Panel concluded that he had voluntarily waived his right to attend.
12. The Panel was mindful that, although this was Mr Silva's application, there was a burden upon him, as explained in the case of *Adeogba*, to engage with his regulator. The convening of a further hearing would have a real impact on costs and efficiency and on other cases RICS is dealing with. Given the lack of engagement, the Panel did not consider that an adjournment would secure Mr Silva's engagement on a future date or serve any useful purpose. The Panel considered that it was fair and in the public interest that the application be resolved and decided to proceed in the absence of Mr Silva.

## Background

13. Mr Silva was a member of RICS from 25 November 2004 until 6 November 2018, when he was formally removed from membership. A hearing had taken place on 19 September 2018

before a Disciplinary Panel of RICS which found that Mr Silva had failed to comply with RICS' requirements in respect of Continuing Professional Development (CPD) for the year 2017.

14. The Disciplinary Panel found that as a consequence, Mr Silva was liable to disciplinary action, being in breach of Rule 6 of the Rules of Conduct for Members. Rule 6 provides that "*Members shall comply with RICS requirements in respect of continuing professional development*".
15. In deciding upon the appropriate sanction, the Disciplinary Panel was informed that Mr Silva had previously received a caution in 2015, and a caution and fine in 2016, for failing to comply with the CPD requirements for those years. The Disciplinary Panel decided that as this was the third breach, the appropriate sanction was that Mr Silva should be expelled from membership of RICS.
16. Mr Silva submitted his application for readmission to membership dated 5 August 2019. He has paid the application fee for re-admission and has paid the costs ordered by the Disciplinary Panel at the hearing in September 2018.

## **Documents**

17. The Panel received a 183-page electronic bundle of documents which included Mr Silva's application form, service documents, RICS' Case Summary and the written determination of the Disciplinary Panel dated 19 September 2018. The Panel was also provided with an email sent from RICS to Mr Silva dated 3 March 2020.

## **Applicant's submissions**

18. The Panel was informed that Mr Silva had not provided any written submissions or documents other than his form applying for readmission.

## **Submissions of RICS**

19. Mrs Sherlock referred to the Case Summary in the hearing bundle. She drew the Panel's attention to Mr Silva's failure to provide any evidence to satisfy the Panel that he is now a fit and proper person to be re-admitted to membership of RICS or that his readmission is in the best interest of RICS, as required by Regulation 2.2.2 and Byelaw 3. She reminded the Panel that the burden to satisfy the Panel upon these matters is on Mr Silva as the applicant in this matter.

20. Mrs Sherlock asked the Panel to note that there is no evidence to indicate that the concerns in relation to non-compliance with CPD over a three year period which led to Mr Silva's expulsion following the hearing in September 2018 have been addressed, nor is there any information before the Panel as to his current competence.

### **Legal Advice**

21. The Legal Assessor advised the Panel that:

- a. The application was to be considered under Parts IV and VI of the DRAPRs relating to registration hearings and under the "Rules setting out the procedure for readmission to membership following disciplinary expulsion" ("the Readmission rules");
- b. The Panel should not seek to go behind the decision of the Disciplinary Panel of September 2018;
- c. The Panel's task was to consider whether, in accordance with Regulation 2.2.2 and Byelaw 3, Mr Silva was a fit and proper person to be readmitted to membership of RICS and whether his readmission was in the best interests of RICS;
- d. The burden was upon Mr Silva, as the applicant, to satisfy the Panel that he was suitable for readmission to membership.
- e. The Panel's powers, as set out in Rule 6 of the Readmission Rules, were to
  - a. Grant the application unconditionally
  - b. Grant the application conditionally
  - c. Grant admission to a different membership class than that last held by the applicant;
  - d. To refuse the application.

### **DETERMINATION**

22. The Panel accepted and applied the legal advice given. It considered the submissions of Mrs Sherlock on behalf of RICS.

23. In Mr Silva's absence, the Panel carefully considered his form of application for readmission dated 5 August 2019. It noted that Mr Silva had paid the required fee and the costs of the September 2018 disciplinary hearing. However, the Panel was mindful that the burden is

upon Mr Silva to satisfy the Panel that he is a fit and proper person to be readmitted to membership and that readmission is in RICS' best interests. Although this is his application, Mr Silva has not engaged with this process and, other than the application form itself, there is no further, current, information before the Panel about Mr Silva's activities since his expulsion.

24. The Panel noted the requirement of Rule 5(f) of the Readmission rules which refers to steps taken by the Applicant to address the issues for which he was expelled. The Panel had no such information. It had no information as to Mr Silva's reflection upon the matters which led to his expulsion or whether he has gained insight into the importance of compliance with RICS' CPD requirements. The Panel has not been provided with any basis for confidence that there is no risk of repetition of the past failings in the future.
25. In these circumstances, the Panel concluded that Mr Silva had not discharged the burden upon him. It could not be satisfied that Mr Silva is a fit and proper person to be readmitted to membership, or that his readmission would be in RICS' best interest.
26. The application of Mr Ethige Silva for readmission to membership of RICS is therefore refused.

## **Publication**

27. The Panel directs publication in accordance with Supplement 3 to the Sanctions policy, that is on RICS website and in Modus.

## **Costs**

28. RICS applied for its costs in the sum of £3,350.00. Mrs Sherlock confirmed that Mr Silva had been provided with a schedule of costs in advance of the hearing, on 25 March 2020.
29. Mr Silva had not submitted any comment on the costs schedule.
30. The Panel was mindful that it was able to impose an order for costs which it considered to be fair and reasonable. Mrs Sherlock confirmed that the element of the costs identified as the hearing costs (in the sum of £2,650.00) took into account that the hearing had taken place by remote conference call.

31. The Panel saw no reason to depart from the costs sought by RICS. The Panel orders that Mr Silva pay the costs of RICS in the sum of £3,350.00.

### **Appeal Period**

32. Mr Ethige Silva has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.

33. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.





