

DECISION SHEET

RICS Regulatory Tribunal Rules 2020

Part VI, Regulatory Tribunal Single Member Decision

Regulated Member: Pravesh Boulel - 1122991
Single Member Decision of: Rosalyn Hayles
Case Number: REG0000167706
Date of Decision: 3 February 2023

CHARGE:

The formal charges against the Regulated Member are:

1. *You were convicted on 3 June 2020 of the offence of bribery by public official in breach of section 4(1)(b) and (2) of the Prevention of Corruption Act ("POCA"), which resulted in a custodial sentence of 6 months imprisonment.'*

You are therefore liable to disciplinary action in accordance with Bye-law 5.2.2(d)

2. *You failed to notify RICS promptly in writing that you had been convicted of a criminal offence carrying on first conviction the possibility of a custodial sentence in that:*
 - a. *You were convicted by the Appellate Court of a criminal offence on 3 June 2020, namely Bribery, which resulted in a custodial sentence of 6 months imprisonment; and*
 - b. *you failed to notify RICS of this conviction promptly or at all.'*

Contrary to Bye-law 5.2.2.d.i

You are therefore liable to disciplinary action in accordance with Bye-law 5.2.2(c)

ALLEGED RULES/BREACH

1. Bye-law 5.2.1 provides:

Every Member shall:

...

(d) disclose promptly in writing to RICS that either:

(i) he;...

Has been charged with or been convicted of a criminal offence carrying on first conviction the possibility of a custodial sentence.

Bye-law 5.2.2 provides:

'A Member may be liable to disciplinary action under these Bye-Laws, whether or not he was a member at the time of the occurrence giving rise to that liability, by reason of:

...(c) a failure to adhere to these Bye-Laws or to Regulations or Rules governing Members' conduct ...

...(d) having been convicted of a criminal offence which could result in a custodial sentence'

MATERIALS CONSIDERED

2. I have been provided with and duly considered a bundle of 72 pages in total, consisting of the following sections: Allegations; Chronology and case parties; Report; Schedule of costs; RICS Rules, Guidance and Law; Evidence (which includes a copy of a media article dated 3 April 2016, the Judgment of the Intermediate Court of Mauritius dated 27 January 2016, the Sentence of the Intermediate Court of Mauritius dated 23 March 2016, the Judgment of the Supreme Court of Mauritius dated 3 June 2020 in respect of Mr Boulel's appeal against the previous Judgments, correspondence between RICS and Mr Boulel during and at the end of the RICS' investigation, correspondence between RICS and the Supreme Court of the UK and the Judicial Committee of the Privy Council, a letter sent on behalf of the Secretary to the Office of the President of Mauritius dated 11 July 2022 in respect of the remittance of Mr Boulel's sentence, and Mr Boulel's responses (dated 3 October and 15 November 2022) to RICS' allegations.

BACKGROUND

3. Mr Boulel was first registered with RICS on 1 January 2000.
4. The Intermediate Court of Mauritius ('the Court') convicted Mr Boulel (following his plea of not guilty) on 27 January 2016 of the offence of 'bribery by public official' under the Prevention of Corruption Act. The Court's Judgment was signed by its Vice President. It includes a detailed account of the circumstances of the offence (said to have taken place on or around 11 November 2005). The Judgment notes that Mr Boulel was at that time the senior Government Valuer handling the file of Mrs Katy Lee Choong Tong ('Mrs KLCT'). He was found guilty on the basis that he had solicited from Mrs KLCT Rs50,000 'so as to assess the value of the property which she purchased at Desforges (SSR) Street in such a way to reduce the registration duty payable'. The

Judgment sets out the relevant provision of the Prevention of Corruption Act, including its reference to the potential sentence for any public official convicted of such of offence, namely *'penal servitude for a term not exceeding 10 years'*.

5. On 23 March 2016 the Court sentenced Mr Boulel to six months' imprisonment. The Court's Vice President, in issuing that sentence, took account of the fact that it was Mr Boulel's first conviction, but said that a *'short sharp shock in terms of a custodial sentence is warranted'*, having referred to the nature of the offence as being very serious, such that it required a *'strong signal is given to the public at large that the court is not prepared to condone such offences where the officers of the government fail in their duty and bring disrepute to their office'*.
6. On 3 June 2020 the Supreme Court of Mauritius ('the Supreme Court') issued its Judgment in respect of the appeal which Mr Boulel had lodged against both his conviction and his sentence. The Supreme Court dismissed the appeal against the conviction.
7. In relation to the Mr Boulel's appeal against the Court's sentence, the Judgment of the Supreme Court *said 'we are of the view that the appellant richly deserves the custodial sentence passed on him, despite his clean record. The sentence is indisputably proportionate to and commensurate with the seriousness of the offence and is meant to act as a deterrent ...'*. However, the Supreme Court accepted that the delay which had occurred between the date of the commission of the offence and the conclusion of the criminal proceedings was relevant to the appropriate length of the sentence, and reduced Mr Boulel's custodial sentence from six months to three months, *'on account of the delay'*.
8. Mr Boulel sought leave to appeal to the Judicial Committee of the Privy Council ('the Privy Council'). A letter from the Privy Council to Mr Boulel's legal representative dated 15 June 2021 stated that Mr Boulel's application for permission to appeal had been issued. Mr Boulel's application for permission to appeal the Supreme Court's decision was refused by the Privy Council on 25 May 2022 (as set out in correspondence sent to RICS, who by that time had become aware of the matter and were in correspondence with both Mr Boulel and the Privy Council about it).
9. On 11 July 2022 the President of Mauritius granted remission of the remainder of Mr Boulel's sentence, with the effect that he was released from prison on 15 July 2022, having served around six weeks of the sentence.
10. Mr Boulel did not notify the RICS at any time of the fact that he had been convicted by the Court (as of January 2016) and sentenced to a custodial term (in March 2016),

nor that his appeal against the conviction had been dismissed by the Supreme Court (in June 2020). According to the RICS report in the bundle before me, RICS first became aware of Mr Boulel's conviction on 28 June 2021, by means of a media report which had been published in May 2018. On 12 July 2021 RICS contacted Mr Boulel to seek further information.

11. In correspondence with RICS about the allegations and RICS' disclosure of documents (on 3 October 2022), Mr Boulel said (in summary) that:

- The *'case was not finalised'* and there was no *'custodial sentence'* on 3 June 2020 *'in as much as there was a stay of execution of the sentence'* as a result of his application for permission to appeal to the Privy Council.
- As at 3 June 2020 *'the conviction mentioned not six months of custodial sentence but three months'*.
- The result of his petition to the President of Mauritius was that his *'conviction was terminated'* as of 15 July 2022 and *'according to me, given the fact that the custodial sentence was terminated upon a petition, this just goes to show that such a conviction was not appropriate'*.
- Mr Boulel's legal representative had misunderstood the factual situation, as had the Court *'as they were not professionals in the field of valuation'*. Mr Boulel said that *'Unfortunately my Counsel was unaware that the initial charge against me had been altered and all along he kept fighting the case and cross examining the witnesses on a wrong charge which had been altered'*. He also said that this issue had not been considered when he appealed the Court's decision *'as only points of law were taken on board'*.
- Mr Boulel asked for his case to be considered leniently by RICS, highlighting several factors which he said should be regarded as mitigation, including: his co-operation with RICS' investigation and provision of relevant documents; the fact that he had not done any valuation work or used *'the logo or title of RICS'* for *'many years'* but had nevertheless continued to pay his annual membership fee (despite his financial difficulties) and had complied with CPD requirements; and the stress, insomnia, headache, loss of salary and financial hardship which he had experienced since 2005 as a result of the court proceedings.

12. Mr Boulel made further comments on 15 November 2022, in response to additional disclosure by RICS. In addition to reiterating some of the points he had previously raised, he said (in summary) that:

- The length of time since the date of the alleged offence should be taken into consideration by RICS.
- As RICS had been unable to obtain the sentencing remarks *'it is unable to comment on the Court's consideration of the seriousness of the offence'*.
- A sentence of three months in length was a *'nominal sentence'* in the context of an offence which could have resulted in a ten-year custodial sentence. That three-month sentence was later further reduced by the President of Mauritius.
- In terminating Mr Boulel's conviction, the President of Mauritius had *'considered all aspects of the case including public interest'*, and the sentence which had been passed on him also *'considered the seriousness of the offence as well as the public interest'*.
- Against that background, any disciplinary action by RICS *'including heavy costs'* would be *'tantamount of additional punishment and costs'* for Mr Boulel.
- Mr Boulel was not in a position to exhibit remorse, given his consistent and ongoing denial that he had committed the offence (although he *'respected the judgment'*).
- The amount of costs identified by RICS seem very high given that information provided by Mr Boulel constituted the bulk of the evidence gathered by RICS. The costs are also *'grossly disproportionate'* compared to court charges in Mauritius. Mr Boulel asked RICS to reconsider the amount of costs, in light of his difficult financial situation, the extent of his co-operation with RICS' investigation, and his good record in terms of payment of RICS fees. He asked for leniency, and an award of only nominal costs.
- He should be given the option of leaving RICS membership voluntarily without consideration of the matter by a Single Member of the Regulatory Tribunal, in order to mitigate costs.

Mr Boulel also requested details of the *'maker of the allegation'* and requested that the information he had provided to RICS should be treated as confidential.

FINDINGS OF FACT

13. I note that I have not seen a Certificate or Memorandum of Conviction in this case. However I have been provided with: the Court's Judgments dated 27 January 2016 and 23 March 2016, as well as the Supreme Court's Judgement dated 3 June 2020. The contents of those documents are summarised earlier in this decision. Mr Boulel (although he denies having committed the underlying offence and he disputes the RICS's allegations) has not disputed that those documents are valid copies of the Court and Supreme Court's Judgments in his case.
14. In relation to the facts alleged at paragraph 1, I am mindful that the Supreme Court dismissed Mr Boulel's appeal against his conviction, but that it did reduce his sentence by three months (to a period of three months). It is nevertheless correct (and not disputed by Mr Boulel) that he was originally sentenced (by the Court, on 23 March 2016) to six months in custody.
15. In relation to paragraph 2 of the allegations, I note that Mr Boulel has not disputed that: he was required to notify RICS of any conviction of a criminal offence carrying on first conviction the possibility of a custodial sentence; the offence of which he was convicted carries such a risk of a custodial sentence on first conviction (and indeed he was sentenced to custody by the Court, upheld by the Supreme Court even though the period of custody was reduced); or that he did not make any notification to the RICS about his conviction.
16. Mr Boulel's comments assert that he made no notification to RICS because the case was '*not finalised*' and there was '*no custodial sentence*' as at 3 June 2020, because the execution of the sentence had been stayed, pending the outcome of Mr Boulel's application to appeal to the Privy Council.
17. I have carefully considered Mr Boulel's comments, but I do not accept his assertion that there was no '*conviction*' requiring notification to RICS as of 3 June 2020. On my reading of the Court's and Supreme Court's Judgments, Mr Boulel was convicted in January 2016 (and subsequently sentenced in March 2016). He was evidently aware of the Court's Judgments in terms of the conviction and the sentence, as he sought to appeal the Court's Judgments to the Supreme Court. On 3 June 2020 Mr Boulel's appeal against the conviction was dismissed by the Supreme Court, as expressly stated in the Supreme Court's Judgment. I have concluded that as at 3 June 2020 Mr Boulel knew that he had been convicted of the offence and that it carried the risk of a sentence of custody, regardless of whether or not his sentence had been stayed pending the outcome of his application to the Privy Council.
18. I therefore find the facts alleged at both paragraphs 1 and 2 proved.

LIABILITY FOR DISCIPLINARY ACTION

19. As set out earlier in this decision:

- RICS Bye-law 5.2.1(d) says that every member shall disclose promptly in writing to RICS that he has been charged with or convicted of a criminal offence carrying on first conviction the possibility of a custodial sentence.
- RICS Bye-law 5.2.2 (d) sets out that a member may be liable to disciplinary action by reason of having been convicted of a criminal offence which could result in a custodial sentence.

20. Mr Boulel does not dispute that he was convicted of a criminal offence by the Court (subsequently upheld by the Supreme Court) and that conviction could (and did, in his case) result in a criminal conviction. Mr Boulel's position is that he continues to deny that he committed the offence which led to the conviction (and says that this was due to a lack of understanding on the part of his legal representative and the Court). He also asserts that the conviction was not '*appropriate*' which he believes is demonstrated by the President of Mauritius's decision in July 2022 to grant remission of part of his sentence.

21. Mr Boulel does not challenge RICS' case that he never made any notification to RICS about the criminal proceedings, either following the Court's Judgment in January 2016, or following the Supreme Court's Judgment in June 2020. The reasons he has given for his failure to make the notification are summarised earlier in this decision.

22. I note that all Members agree to adhere to the RICS Rules, Regulations and Bye-Laws and accept that they may be subject to disciplinary action if they fail to do so.

23. I am satisfied that Mr Boulel was convicted of an offence which could (and did in his case) result in a criminal conviction (that conviction being issued by the Court in January 2016 and subsequently upheld by the Supreme Court in June 2020).

24. I am also satisfied that Mr Boulel was aware that he had been convicted of an offence which could on first conviction result in a custodial sentence. As of 3 June 2020, he was aware that his appeal against his conviction had been dismissed, and that his appeal to the Supreme Court against the custodial sentence had resulted only in a reduction of the length of that sentence. I am satisfied that on that date, regardless of Mr Boulel's intention to take his appeal further (by applying for permission to the Privy Council) and regardless of the stay of execution of his sentence pending the outcome of that process, he was aware of the Supreme Court's Judgment and the fact that he stood convicted.

25. Accordingly, I am satisfied that Mr Boulel is liable to disciplinary action.

REGULATORY SANCTION

26. I have borne in mind that the purpose of sanctions is not to be punitive, although they may have that effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of RICS as its regulator, and to protect the public. Sanctions must be proportionate, and my decision must take account of all the circumstances of the case, including any aggravating and mitigating factors.

27. I have given careful consideration to RICS' Sanctions Policy. I have taken into account the fact that Mr Boulel has a previously unblemished disciplinary history. I have also taken into account the fact of Mr Boulel's co-operation with RICS' investigation.

28. I have identified the following aggravating factors which are present in this case:

- The criminal offence of which Mr Boulel was convicted resulted in a custodial sentence (regardless of that sentence's subsequent reduction and the remittal of part of that sentence by the President of Mauritius);
- The criminal offence was one involving a lack of integrity
- The behaviour which resulted in the conviction was intentional
- Mr Boulel stood to benefit financially from the behaviour which resulted in the criminal conviction, at the expense of a consumer
- Mr Boulel held a position of seniority at the time, in that he was Senior Government Valuer
- The Supreme Court's Judgment concluded that Mr Boulel *'richly deserves the custodial sentence passed on him, despite his clean record. The sentence is indisputably proportionate to and commensurate with the seriousness of the offence and is meant to act as a deterrent'*.
- Mr Boulel is not in a position to demonstrate acceptance of responsibility or regret for the failing which led to the conviction, as he maintains his denial of the offending behaviour
- In respect of Mr Boulel's non-disclosure of the conviction to RICS, that was an ongoing breach for a lengthy period of time (from 3 June 2020 until July 2021, when RICS contacted him about the matter)

- There was media coverage of Mr Boulel's conviction, albeit the media report did not identify him as being an RICS member

29. I have identified the following mitigating factors which are present in this case:

- Mr Boulel co-operated with RICS' investigation
- Mr Boulel's experience of stress, insomnia, headache, loss of salary and financial hardship since 2005 as a result of the court proceedings
- The events resulting in the conviction were isolated and occurred a considerable time ago (in 2005)

30. In my determination as to sanction, I have carefully weighed up Mr Boulel's interests against the public interest.

31. I first considered whether to impose no sanction. I concluded that not imposing a sanction would fail to: uphold professional standards; maintain the reputation of the profession; adequately mark the public interest, in light of the seriousness of a criminal conviction involving a lack of integrity which resulted in a custodial sentence, and in light of the seriousness of Mr Boulel's failure to make the required notification of that conviction to his regulator, RICS.

32. I went on to consider imposing a caution. The Sanctions Policy states that a caution is likely to be given in circumstances where the breach is minor and unlikely to be repeated. I concluded that both Mr Boulel's conviction and his failure to notify the RICS of it are unlikely to be repeated. However, neither of those matters could accurately be described as minor, in terms of their potential impact on maintenance of public confidence and the declaring and upholding of professional standards. I concluded that a caution would be a wholly inadequate sanction in a case involving a criminal conviction in respect of behaviour which would have directly benefited the RICS member at the expense of a member of the public, and which was so serious that it resulted in a custodial sentence.

33. I also considered imposing a reprimand. The Sanctions Policy states that a reprimand may be given where there has been/is a risk of public harm. I determined that issuing a reprimand would be inadequate to reflect the seriousness of either Mr Boulel's conviction or his misconduct in failing to notify the RICS about that conviction for a lengthy period of time.

34. The next available sanction in terms of seriousness is undertakings. The Sanctions Policy suggests that imposing an undertaking may be appropriate (in combination with another sanction) to ensure that a member refrains from continuing or repeating the conduct in question, or that an undertaking may require a member to apologise. I noted that this is not a case relating to Mr Boulel's professional competence (and that undertakings are more likely to be appropriate in such cases). It is my view that: there is little risk of repetition of the behaviour which led to Mr Boulel's conviction, or of his misconduct in relation to non-notification to the RICS; and it is unlikely that Mr Boulel would comply with any undertaking requiring him to apologise in respect of his conviction, given that he denies any offending behaviour. In those circumstances, I concluded that imposing undertakings was unlikely to be an appropriate sanction. In any event, I considered that imposing an undertaking (or undertakings) would be inadequate in terms of the public interest in maintaining confidence in the profession and in the regulatory process, given the serious nature of Mr Boulel's conviction and his misconduct.
35. I considered imposing a fine. I took into account the submissions that Mr Boulel made about his limited financial resources. I also carefully considered whether or not imposing a fine would be adequate in terms of upholding and declaring professional standards and maintaining public confidence in the profession and its regulation, and concluded that imposing a fine would be inadequate in a case involving: a conviction for a matter involving a lack of integrity and which resulted in a custodial sentence; and a subsequent failure to notify RICS as the regulator about that conviction.
36. I went on to consider the possibility of imposing conditions, mindful that any condition imposed must be specific, measurable, achievable, realistic and time-bound as well as being proportionate and addressing all the issues. I concluded that there are no relevant conditions that could be imposed in this case, having taken into account (in respect of Mr Boulel's criminal conviction) that it should be wholly unnecessary to impose a condition on any RICS member requiring them to comply with the law, and that Mr Boulel, as an RICS member, had already agreed to comply with the RICS Bye-laws (including the provisions about notification of criminal charges and convictions). In such circumstances I concluded that there are no meaningful conditions which could be imposed. In any event, I also determined that a sanction of conditions would not be sufficient to address the wider public interest, in light of the serious nature of the offence of which Mr Boulel was convicted.
37. Having determined that a sanction of conditions would not be appropriate, I considered the ultimate sanction of expulsion from RICS membership. I noted that expulsion is the sanction of last resort and should be reserved for those categories

of cases where there is no other means of protecting the public or the wider public interest. I noted that the Sanctions Policy states that (in the absence of extenuating circumstances) expulsion is likely in cases involving: fraud, dishonesty or a lack of integrity; or a conviction for a serious criminal offence (an offence for which the penalty could be a custodial sentence).

38. I noted that the allegations proven against Mr Boulel involve both those factors, namely:

- a. a conviction for a criminal offence which resulted in a custodial sentence of six months (albeit that sentence was subsequently reduced to three months in length, and ultimately was remitted part-way through) but which could have resulted in a term of imprisonment of up to ten years, and which was therefore *'serious'*.
- b. that conviction was for behaviour involving a lack of integrity.

39. In reaching my conclusion about sanction I carefully balanced the wider public interest against Mr Boulel's interests and his professional standing. I gave particularly careful consideration to the mitigating factors highlighted by Mr Boulel, including the passage of a considerable amount of time since the events which resulted in his conviction, and his personal circumstances (including his health and financial difficulties). I weighed those factors carefully in reaching my decision about whether or not expulsion was the only appropriate sanction in this case. I had regard to the impact that expulsion might have upon Mr Boulel, but determined that his interests are outweighed by my duty to give priority to the significant public interest concerns raised by this case. I am satisfied that, in these circumstances, any lesser sanction than expulsion would undermine public trust and confidence in the profession and in RICS.

ORDER MADE

40. In accordance with Part VI of the Regulatory Tribunal Rules I make the following order:

That Pravesh Boulel shall be expelled from membership of the RICS.

TAKING EFFECT OF THE ORDER

41. In accordance with Part VI of the Regulatory Tribunal Rules, this order will take effect 14 days from service of the Single Member's decision upon the Regulated Member, unless notification in writing is received from the Regulated Member or RICS stating that they consider that the findings and/or the Regulatory Sanction imposed by the Single Member are wrong.

COSTS

42. RICS has applied for costs in the sum of £1,550, representing £1,200 of investigation costs plus the £350 cost of consideration by a Single Member.
43. Mr Boulel has submitted that a '*nominal*' costs order should be made, highlighting that the bulk of the evidence obtained by RICS was provided by him. He has also said that the RICS' costs are grossly disproportionate to the costs of the legal proceedings in Mauritius. He has made submissions that he has been experiencing financial hardship, and has asked for leniency. I note that he has not provided a formal statement of means.
44. I have carefully considered RICS' application and Mr Boulel's submissions. I acknowledge that a member against whom allegations have been found proved should normally pay the reasonable and proportionate costs associated with RICS bringing the case against them, so that those costs do not ultimately fall upon the rest of the RICS membership. I also accept that RICS' investigation costs in this case were legitimately incurred. I note that Mr Boulel had a duty to co-operate with RICS' investigation, and that his having done so is not a reason to reduce the amount of costs he should be required to pay. However, I acknowledge that the amount of costs requested in this case is a significant sum of money, and that Mr Boulel says he has experienced loss of salary and financial hardship over a very lengthy period of time (from 2005) since the relevant events occurred. In all the circumstances, I concluded that it would be reasonable and appropriate to order Mr Boulel to pay, in total, costs of £775.
45. In accordance with Part VI of the Regulatory Tribunal Rules I make the following order in respect of costs:

Mr Boulel will pay costs in the amount of £775.

PUBLICATION

46. In accordance with Part VI of the Regulatory Tribunal Rules the Single Member's Record of Decision will be published following the expiry of 14 days from service of the Single Member's decision upon the Regulated Member.