

Disciplinary Panel Hearing

Case of

Mr Ismaila Ajenifuja [1172509] Essex RM18 7RX

On

Wednesday 5 June and Thursday 6 June 2019

At

RICS 55 Colmore Row, Birmingham

Panel

Ian Hastie MRICS (Surveyor Chair)

Richard Bayly (Lay Member)

Adrian Davey MRICS (Surveyor Member)

Legal Assessor

Christopher Hamlet

RICS Presenting Officer

Kelly Sherlock

Respondents' Representative(s)

Mr Ismaila Ajenifuja, representing himself

Hearing Officer

Miss Maria Choudhury

Background/Summary

1. Mr Ajenifuja was given notice of his referral to a Disciplinary Panel on 11 May 2018 following concerns that he had failed to register his firm, Freelance Chartered Building Surveyor and Registered Valuer, had held himself out as a registered valuer, had made use of the RICS logo when he was not entitled to do so and had failed to cooperate with RICS staff investigating those matters.
2. These concerns were supported by a complaint from Ms P on 30 October 2017 and subsequently from Ms M on 8 June 2018.

Charges

3. The formal charges against Ismaila Ajenifuja are as follows:

1. He failed in his professional obligation to register his firm, Freelance Chartered Building Surveyor & Registered Valuer (the “Firm”), in 2015, when required to do so under Rule 3.1 of the Rules for the Registration of Firms.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

2. In one or more of the following ways, he purported to be a RICS Registered Valuer when he knew or ought to have known that he was not entitled to do so:
 - 2.1 By sending emails between 11 May 2017 and 5 July 2018 which included the words “Registered Valuer” after his name;
 - 2.2 By advertising himself as being a “Registered Valuer” on the Firm’s website;
 - 2.3 By referring to himself as a “Registered Valuer” within a letter to Ms P dated 19 September 2017;
 - 2.4 By referring to himself as a “Registered Valuer” within an invoice to Ms P dated 15 September 2017;
 - 2.5 By referring to himself as a “Registered Valuer” within an undated letter to Ms P;
 - 2.6 By referring to himself as a “Registered Valuer” within a Building inspection report dated 12 April 2018; and/or
 - 2.7 By referring to himself as a “Registered Valuer” on his LinkedIn profile.

In doing so, he failed to act with integrity and/or failed to comply with his professional obligations.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

3. In one or more of the following ways, he used the RICS logo thereby holding the Firm out to be regulated by RICS when he knew or ought to have known that he was not entitled to do so:
 - 3.1 By advertising as such on the Firm's website;
 - 3.2 On an invoice to Ms P dated 15 September 2017;
 - 3.3 Within an undated letter to Ms P; and/or
 - 3.4 Within a Building inspection report dated 12 April 2018.

In doing so, he failed to act with integrity and/or failed to comply with his professional obligations.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

4. He failed to respond substantively or at all with RICS staff during the course of any or all the following RICS regulatory investigations:
 - 4.1 Concerns/queries raised following submission of an application for Valuer Registration;
 - 4.2 Concerns raised in relation to Ms P's complaint; and/or
 - 4.3 Concerns raised in relation to Ms M's complaint.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

In light of all or any of the allegations set out above, Mr Ajenifuja is liable for disciplinary action under RICS Bye-Law 5.2.2(a) and/or 5.2.2(c).

Response

4. The Respondent was served notice of the Disciplinary Panel Hearing on 20 March 2019. He completed a Listing Questionnaire in response which confirmed he denied all charges and liability to disciplinary action. He provided reasons with that questionnaire in which he asserted there "...was a lack of information on membership subscriptions and a lack of informations regards regulations of firms [sic]..."

Evidence

5. The Panel considered a bundle of documents produced by RICS, running to 188 pages. The bundle included documents to indicate that the respondent had been registered as a Valuer since 2015, but had not renewed that registration by the deadline of 15 July 2016, despite several reminders from RICS. On 8 May 2017 RICS sent a letter informing the respondent that he had been removed from Valuer Registration, that he needed to submit a new application, and that he was to stop all valuation work. The bundle contained a Valuer Registration Form submitted in or around May 2017 and related material, which prompted further enquiry by RICS and gave rise to the concerns in this case.

6. The Panel observed that the bundle contained an email from RICS to the Respondent, dated 17 July 2017, in which it was highlighted, inter alia, that he:
 - a) had not applied for the Firm, which had started trading in 2015, to be registered contrary to Rule 3.1 of the Rules for the registration of firms; and
 - b) was advertising as a Registered Valuer without receiving confirmation from RICS that he had been approved as such.

7. The Respondent was asked, in the same email, to:
 - a) provide confirmation that he had ceased carrying out regulated valuations;
 - b) explain why he had not made the relevant application for Valuer Registration prior to May 2017;
 - c) explain why he did not apply to register the Firm prior to starting trading on 20 May 2015;
 - d) cease using the RICS logo immediately and confirm that he had done so.

8. The Respondent acknowledged the email the following day, but subsequently contacted RICS to assert that he had not breached any rules. He did not appear to respond substantively to the enquiries or confirm that he had addressed the areas of concern.
9. RICS chased him for a response on 14 August 2017 and 11 September 2017.
10. The Respondent provided a completed response on 19 September 2017. It was noted that he continued to assert therein that he had breached no rules and did not confirm compliance with RICS' requests to, inter alia, cease regulated valuations and use of the RICS logo
11. RICS contacted the Respondent on 10 November 2017 asking that he address all of the outstanding matters by 23 November 2017. In the absence of a response, RICS chased the Respondent on 28 November 2017, 15 December 2017 and 12 March 2018.
12. The Respondent did provide a response on 19 March 2018 in which he asserted that the Firm was appropriately registered.
13. In addition, the bundle included an email from RICS to the Respondent dated 19 March 2018 which stated:

"I can confirm that I have reviewed RICS' records concerning both firms you have mentioned and also your record concerning being a registered valuer and can confirm that neither AB Architect & Builder or Freelance Chartered Building Surveyor

& Registered Valuer is registered for regulation, therefore you do not have the right to use the RICS logo on your stationery or website.”

14. With respect to the Respondent’s claim to be a Registered Valuer, the letter continued:

“At present your application is still under review and has not been approved therefore you are not a Registered Valuer and you do not have the right to use the designated Registered Valuer.”

15. In response to the subsequent letter from RICS dated 11 May 2018 notifying the Respondent of his referral to a Disciplinary Panel, the Respondent stated by email on 11 May 2018 as follows:

“I think it’s time to end all your blackmail my professional integrity, it’s almost a year you continue requesting for unnecessary information’s regard a well qualified professional statutes person.

I think I need to see your Manager, because it’s seems you don’t understand were am coming from and my competent in front of RICS.

Please stop insulting me, am taking the issue forward as soon as possible [sic]”

16. The bundle also contained complaints from Mrs P in October 2017, concerning the work the Respondent carried out in respect of a garage conversion project in March 2016, and from Mrs M, an Associate Member of RICS, in April 2018, in respect of an inspection report he produced in April 2018. Both complaints included material which supported the existing concerns. These are reflected at charge 2.3-2.5, 3.2-3.3 and 4.2 in respect of Mrs P, and 2.6, 3.4 and 4.3 in respect of Mrs M.

17. The Respondent was notified of Mrs P’s complaint on 23 April 2018 and Mrs M’s

complaint on 8 June 2018.

18. The Panel noted that the Respondent sent a further email to RICS on 3 July 2018 to assert once again that he was a registered valuer. He stated he “knew nothing about” the Valuer Registration removal letter sent to him by RICS on 8 May 2017.

19. A copy of the Valuer Registration removal letter dated 8 May 2017 was re-sent to the Respondent on 3 July 2018. The Panel observed that the letter expressly highlighted that the Respondent had failed to submit his Valuer Registration renewal by the deadline of 15 July 2016 and that he should stop all relevant work immediately. The Panel further noted the undated telephone note which followed in which the Respondent referred directly to that removal letter.

20. The Respondent provided a bundle of material upon which he relied, running to 39 pages. The bundle included a written response to the allegations in which he again denied all of the charges. He stated that he had been a member of RICS since 22 November 2002 and a RICS Valuer in 2015. He stated he qualified in Italy and started a business as a Sole Practitioner in Essex in 2015.

21. The Panel noted that the bundle contained, inter alia, a “Firm Data Form” which appeared to have been completed in or around July 2015, and a “Firm Registration Form” dated 11 May 2017.

Submissions

22. Ms Sherlock provided a detailed case summary. She supplemented this with oral submissions which highlighted the key material in the bundle. She submitted that the Respondent had been repeatedly reminded that neither he nor the Firm were properly registered with RICS and that he knew, or ought to have known, that he was continuing to act in breach of Rule 3 of the Rules of Conduct for Members 2007.
23. Ms Sherlock conceded that registration for valuations in Italy, where the Respondent had been working until 2015, was not mandatory. However, she submitted the onus was on the Respondent to establish that his conduct was the product of a misconstruction of the RICS requirements rather than a lack of integrity.
24. She submitted that the Respondent's repeated references to his Registered Valuation status and use of the RICS logo, in spite of reminders by RICS to the contrary, was evidence of a lack of integrity. She asserted it reflected a deliberate course of conduct by him.
25. As regards Charge 4, Ms Sherlock submitted that whilst the Respondent had provided responses to the concerns raised by RICS, they were unhelpful, evasive and failed to provide the information requested. Instead, he had a tendency to 'push the questions back' to RICS. She drew attention to the various attempts by RICS to elicit an answer from the Respondent to specific enquiries and to the fact that deadlines for the provision of information were missed.
26. As such, she submitted he did not cooperate fully with RICS as required in accordance with Rule 9 of the Rules.

27. The Respondent addressed the Panel by way of oral evidence. He reiterated his formal denial of the charges, though he made concessions during his evidence that appeared to recognise that some of the charges were made out as a fact.
28. For example, with respect to Charge 1, the Respondent submitted that he had made two unsuccessful attempts to register the Firm with RICS – in July 2015 and May 2017. He asserted that RICS had directed him to the incorrect forms that he used for those applications and should have provided him with greater assistance. However, under cross examination, he appeared to accept that as a matter of fact, the Firm had not been registered and he knew that at the time.
29. In respect of Charges 2 and 3, the Respondent recognised that RICS had expressly brought it to his attention that he was not entitled to use the “Registered Valuer” term, nor the RICS logo, but he continued to do so nonetheless. He asserted his belief that RICS were incorrect in their interpretation of the relevant guidance. However, he alluded to the fact that he continued to use the RICS logo in spite of that direction from RICS “because of the risk to his business and/or clients of not doing so”.
30. In respect of Charge 4, the Respondent stated that he believed he co-operated with RICS’ regulatory investigations, “100% in respect of the complaints raised following submission of an application for Valuer Registration, and 70% in respect of the complaints from Mrs P and Mrs M”,. He stated that he did not cooperate regarding the complaints from Mrs P or M because, respectively, he did not have a contract with Mrs P and he did not know Mrs M. He asserted the degree of his cooperation overall to have been adequate.

Burden and standard of proof

31. The Legal Assessor provided advice to the Panel that the burden of proving all charges rests with RICS and they must be proved to the civil standard, that is, such that they are more likely than not to have occurred as alleged. It was advised that that is a single unwavering standard of proof, though the more unlikely an allegation the more cogent the evidence that the Panel might require to prove it. There is no requirement for the Respondent to prove anything.

Integrity

32. The Legal Assessor provided further advice regarding the lack of integrity alleged in Charges 2 and 3. It was advised that this is a wider concept than dishonesty (which is not charged), denoting a breach of *ethical* standards of the profession that may or may not include dishonest conduct.
33. The Panel was referred to *Wingate & Evans v SRA [2018] EWCA Civ 366*, para 100 (Lord Justice Jackson):

Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

34. Further, the Panel was referred to RICS's published guidance on Global Professional and Ethical standards. Under heading "Act with integrity":

"This means being honest and straightforward in all that you do."

35. The Guidance sets out a non-exhaustive list of behaviours/actions by way of examples and the kind of questions a professional should pose to assess the ethics of their behaviour, including:

- *“what would an independent person think of my actions?”*
- *How would my actions look to RICS?*
- *How would my actions look to my peers?*
- *Is this in the interests of my client, or my interest, or the interest of someone else?*
- *Do I promote professional and ethical standards in all that I do?*
- *Do I say “show me where it says I can’t” or do I say “is this ethical?”*

36. The Panel was advised that a decision on lack of integrity is a question of *judgment* not fact. It may consider that an act or omission conducted in *ignorance* of relevant professional standards or guidance is unlikely to meet that threshold, though it may represent a breach of proper professional standards, which is charged in the alternative.

Decision on the Charges

37. The Panel determined as follows:

The formal charges against Ismaila Ajenifuja are as follows:

1. He failed in his professional obligation to register his firm, Freelance Chartered Building Surveyor & Registered Valuer (the “Firm”), in 2015, when required to do so under Rule 3.1 of the Rules for the Registration of Firms.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

Proved.

The Panel were satisfied that Rule 3.1 gave rise to a clear obligation which had not

been met by the Respondent. Though it acknowledged the Respondent's apparent efforts to register in 2015 and 2017, it was satisfied that he was aware, as he conceded in his evidence, that he had received no indication from RICS that they had been successful and thereby had no reason to consider otherwise.

Further, the fact that the Firm had not been registered was expressly brought to his attention in July 2017 and repeatedly thereafter.

2. In one or more of the following ways, he purported to be a RICS Registered Valuer when he knew or ought to have known that he was not entitled to do so:
 - 2.1 By sending emails between 11 May 2017 and 5 July 2018 which included the words "Registered Valuer" after his name;
 - 2.2 By advertising himself as being a "Registered Valuer" on the Firm's website;
 - 2.3 By referring to himself as a "Registered Valuer" within a letter to Ms P dated 19 September 2017;
 - 2.4 By referring to himself as a "Registered Valuer" within an invoice to Ms P dated 15 September 2017;
 - 2.5 By referring to himself as a "Registered Valuer" within an undated letter to Ms P;
 - 2.6 By referring to himself as a "Registered Valuer" within a Building inspection report dated 12 April 2018; and/or
 - 2.7 By referring to himself as a "Registered Valuer" on his LinkedIn profile.

In doing so, he failed to act with integrity and/or failed to comply with his professional obligations.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

2.1-2.7: Proved in their entirety.

The Respondent readily acknowledged that over the period in question, he was holding himself out to be a Registered Valuer in correspondence and other documentation. He further acknowledged that this was in spite of express and repeated direction from RICS that he was not entitled to do so because his RV application had not been approved.

The Panel were satisfied that in that context, the Respondent knew very well that he was not entitled to use the term. It rejected his assertion that he held a genuine belief that the RICS investigator was incorrect in her interpretation of the relevant guidelines and that for that reason he could effectively ignore her direction to cease referring to himself as a Registered Valuer. No evidence was produced that credibly supported such a view. Nevertheless, the Panel considered that if the Respondent had held that view in good faith, he would have engaged more fully with the RICS investigator by providing or referring explicitly to the evidence he believed supported that contention. He did not do so.

It follows that the Panel considered the Respondent's continued use of the term in spite of the clear and repeated direction from RICS, of which he was aware, that he was not entitled to do so, represented a clear lack of integrity and a failure to comply with his professional obligations.

3. In one or more of the following ways, he used the RICS logo thereby holding the Firm out to be regulated by RICS when he knew or ought to have known that he was not entitled to do so:
 - 3.1 By advertising as such on the Firm's website;
 - 3.2 On an invoice to Ms P dated 15 September 2017;
 - 3.3 Within an undated letter to Ms P; and/or
 - 3.4 Within a Building inspection report dated 12 April 2018.

In doing so, he failed to act with integrity and/or failed to comply with his professional obligations.

Contrary to Rule 3 of the Rules of Conduct for Members 2007

3.1-3.4: Proved in their entirety.

Again, the Respondent readily acknowledged that over the period in question, he used the RICS logo in his Firm's correspondence and other documentation in spite of express and repeated direction from RICS that he was not entitled to do so because

his Firm had not been registered.

The Panel were satisfied that in that context, the Respondent knew very well that he was not entitled to use the logo. It again rejected his assertion that he held a genuine belief that the RICS investigator was incorrect in her interpretation of the relevant guidelines and that for that reason he could effectively ignore her direction to cease using the logo. No evidence was produced that credibly supported such a belief. Nevertheless, the Panel considered that if the Respondent had held that view in good faith, he would have engaged more fully with the RICS investigator by providing or referring explicitly to the evidence he believed supported that contention. He did not do so.

Moreover, the Panel were mindful of the Respondent's concession in oral evidence that his continued use of the RICS logo was motivated by a desire to preserve, in terms, the reputational integrity of his business. The Panel concluded that it was more likely to have been this, rather than a genuine belief of his entitlement to use the logo, that explained his conduct.

It follows that the Panel considered the Respondent's continued use of the RICS logo in this context, in spite of the clear and repeated direction from RICS, of which he was aware, that he was not entitled to do so, represented a clear lack of integrity and a failure to comply with his professional obligations.

4. He failed to respond substantively or at all with RICS staff during the course of any or all the following RICS regulatory investigations:
 - 4.1 Concerns/queries raised following submission of an application for Valuer Registration;
 - 4.2 Concerns raised in relation to Ms P's complaint; and/or
 - 4.3 Concerns raised in relation to Ms M's complaint.

Contrary to Rule 9 of the Rules of Conduct for Members 2007

Re. 4.1: Proved. Whilst the Panel acknowledged that the Respondent had engaged with RICS on these issues on a limited basis, it considered his responses to be wholly inadequate in the context of a regulatory investigation. It took account of the Respondent's assertion in oral evidence that he had cooperated "100% of the time" with RICS on this issue.

The Panel considered that whilst the Respondent was not obliged to provide evidence that self-incriminated him, it was incumbent on him to engage substantively with the regulator on the issues in question. His responses were unhelpful, lacked detail and, in the Panel's view, were designed to frustrate and delay. It observed that it was only when RICS drew his attention to impending interim measures proceedings that the Respondent provided material in support of his responses. The Panel concluded from that that the Respondent had, until that point, been deliberately obtuse in his engagement with the RICS.

Re. 4.2 and 4.3: Proved. Again, whilst the Respondent had engaged with RICS in respect of these complaints, the Panel considered it to have been extremely limited. The Panel considered the Respondent's explanations for this, being that he did not have a contract with (in the case of P) and did not know (in the case of M), the clients, to be disingenuous. It was satisfied that RICS provided the Respondent with adequate information to understand the nature and detail of the concerns raised by those complainants and he chose not to cooperate. Once again, the Panel considered this was deliberate and unprofessional.

Liability to disciplinary action

38. The Panel considered the submissions from the parties on this issue. Ms Sherlock submitted that the conduct proved inevitably impacts on the reputation of the profession, undermines public confidence and as such, he is liable to disciplinary

action under Bye-Laws 5.2.2(a) and (c).

39. The Respondent conceded that the findings rendered him liable to disciplinary action.

40. The Legal Assessor gave advice to the Panel that a decision on liability to disciplinary action was a matter for its independent determination. It is a distinct decision to a determination on the facts. It did not follow, therefore, that liability arises automatically upon a finding of fact. The decision required an application of judgment as to whether the matters proved, taken in the context of the circumstances at the time, and the Respondent's actions since, necessitated, at least in theory, a disciplinary response.

41. The conduct proved in this case was considered by the Panel to be serious. The Respondent has repeatedly ignored express directions by RICS about his use of the term "Regulated Valuer" and the RICS logo. His conduct has the clear potential to damage the reputation of and trust in the profession.

42. Further, his refusal to acknowledge his wrongdoing raises real concern as to his insight and the risk of his repeating the same or similar conduct.

43. The Panel concluded that the conduct did render the Respondent liable to disciplinary action on the basis of Bye Law 5.2.2 (a) and (c).

Decision as to sanction

44. The Panel heard further submissions from the parties as to sanction. The Panel bore in mind that the purpose of sanctions is not to be punitive, though that may be their effect. The purpose of sanctions is to declare and uphold the standards of the profession, to safeguard the reputation of the profession and of the RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
45. The Panel paid careful heed to the advice of the Legal Assessor and to the indicative sanctions guidance of the RICS. It recognised that it had a duty to take a proportionate and fair approach to the issue of sanctions. It considered carefully the mitigating and aggravating factors of this case.
46. The Panel took account of the aggravating features of the case that were highlighted by RICS, including the fact that the Respondent's conduct was in deliberate and repeated contravention of clear directions from RICS. It had the effect of misleading members of the public that he was a Regulated Valuer and entitled to use the RICS logo when he was not. Ms Sherlock referred to the need to reassure the public and uphold confidence as well as to deter the Respondent from future non-compliance.
47. The Respondent stated that he had been a member of RICS for 21 years and had no disciplinary history. He reasserted that he did not deliberately breach RICS policy. He submitted it was attributable to a misunderstanding. He referred to the fact that he had already been suspended by an interim orders panel for 12 months and that this had had an impact on his career. He invited the Panel to consider the minimum sanction necessary.

48. The Panel were concerned that the Respondent's conduct reflected a willingness to repeatedly ignore the advice and direction of his regulator over a sustained period. Further, his conduct was likely to mislead members of the public and undermine the reputation of the profession. It was of some concern that the Respondent maintained his assertion that the conduct was the product of a misunderstanding, even after the factual determinations to the contrary. The Panel considered there was a real risk, in that context, of a repetition of the same or similar behaviour.
49. Against that, the Panel acknowledged that he had unblemished record, he had engaged with the proceedings and he acknowledged his liability to disciplinary action, albeit only after the findings of fact were delivered.
50. The Panel considered the matters too serious for no sanction to be imposed. The misconduct was serious, and it was necessary to mark the wrongdoing to restore public confidence. The Panel was not satisfied that this was the product of a momentary lapse of judgment but a deliberate course of conduct that was likely to be repeated.
51. Taking all these factors into account, the Panel considered that neither a Caution nor a Reprimand would be adequate in reflecting the gravity of the wrongdoing and in order to maintain public confidence in the profession. Further, Undertakings and Conditions were not considered practical or appropriate in light of the Respondent's lack of insight and risk of repetition.
52. Accordingly, the Panel concluded that the only means of protecting the public and restoring confidence in the profession was to expel the Respondent from

membership of the Royal Institution of Chartered Surveyors.

53. Accordingly, the Panel orders the Respondent to be Expelled.

Publication and Costs

54. The Panel considered the guidance as to publication of its decisions. It accepted the Legal Assessor's advice. The advice was, and the guidance provides, that it is usual for the decisions of the Panel to be posted on the RICS website and published in Modus.

55. The Panel took account of the Respondent's submission that publication would be damaging to his career and that publication of his suspension had already proved damaging. He requested that any further disciplinary action not be publicised due to the further damage it would cause his business. The Panel saw no reason for departing from the normal practice in this case, given the strong public interest in publicising the decision. Part of the role of the Panel is to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.

56. The Panel orders that this decision be published on the RICS website and in Modus.

57. Both parties addressed the Panel regarding costs. The RICS presenting solicitor asked for costs and had provided a schedule to the Respondent in advance of the hearing. An overall costs award of £10,467 was sought. The Respondent also provided a statement of means to which the Panel had regard.

58. The Panel considered carefully the costs sought and the submissions made thereto. Taking into account the Respondent's means, and his exemplary conduct leading up to and during the hearing, it concluded that it was fair to make a costs order in the sum of £5,250.

59. The Panel orders that the Respondent pay to RICS costs of £5,250.

Appeal Period

60. The Respondent may appeal against this decision within 28 days of notification of this decision, in accordance with Rules 59-70.

61. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules 2009, the Honorary Secretary of RICS has 28 days from service of the notification of the decision to require a review of this decision.

