

**IN THE APPEAL BOARD OF THE FINANCIAL INTELLIGENCE CENTRE ACT****Appeal No.:** 12/3/1/5-PGP/FIC (7/24)

In the matter between:

**PAM GOLDING PROPERTIES (PTY) LTD**

Appellant

and

**THE FINANCIAL INTELLIGENCE CENTRE**

Respondent

Tribunal panel: MF Legodi J (chair), Z Nkubungu-Shangisa and C Woodrow SC.For the appellant: M Clark instructed by Cliffe Dekker Hofmeyr Inc.For the respondent: H Creighton (heads of argument prepared by J Augustyn).Hearing: 18 March 2025.

In re: Appeal in terms of section 45D of the FICA. Whether the Centre was correct in concluding that the appellant had failed to comply with a Directive issued by the Centre, namely Directive 6 of 2023.

**DECISION****Introduction:**

1. Pam Golding Properties (Pty) Ltd, ("**Pam Golding**") appeals against decisions of the Financial Intelligence Centre (the "**Centre**") dated 26 August 2024 to impose certain administrative sanctions against Pam Golding.

2. The impugned decisions of the Centre are contained in a notice of administrative sanction to Pam Golding (the “**notice of administrative sanction**”). Attached to the notice of administrative sanction there are five ‘administrative sanctions’ pertaining to five separate branches of Pam Golding in which the Centre reprimands, cautions and makes recommendations to Pam Golding.
3. The appeal is one in terms of section 45D of the Financial Intelligence Centre Act, Act 38 of 2001 (the “**FICA**”)
4. At the heart of the decisions to impose the sanctions was the finding by the Centre that Pam Golding had failed to comply with FIC Directive 6 of 2023 (“**Directive 6**”). More specifically, the Centre concluded that the failure of Pam Golding to submit separate Risk and Compliance Returns (“**RCR**”) to the Centre for each of Pam Golding’s branches before the due date of 31 May 2023 was in breach / constituted a failure to comply with Directive 6.
5. The notice of administrative sanction provides *inter alia* that:
  - 5.1. Pam Golding has failed to comply with the provisions of and/or directives made in terms of the FICA (par 1);
  - 5.2. Accordingly, in terms of section 45C(6) of the FICA, the Centre imposes an administrative sanction which the Centre attaches to the notice of administrative sanction (as stated, there were five such sanction

documents attached to the notice and marked annexures “A” to “E” respectively<sup>1</sup> for certain ‘branches’ of Pam Golding) (par 2);

- 5.3. Under the heading ‘nature of non-compliance’ the Centre stated as follows *inter alia*: “... in terms of section 62E,<sup>2</sup> read with section 43A(3)<sup>3</sup> of the FIC Act, Pam Golding failed to comply with FIC Directive 6 of 2023 before the due date of 31 May 2023, to submit separate Risk and

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<sup>1</sup> Annexure “A” was for the Pringle Bay branch; Annexure “B” for the Onrus branch; Annexure “C” for the Kleinmond branch; Annexure “D” for the Hyde Park branch; and Annexure “E” for the Hermanus branch.

<sup>2</sup> S 62E provides as follows:

**“62E. Failure to comply with directives of Centre or supervisory body**

*An accountable institution that fails to comply with a directive of the Centre or a supervisory body in terms of section 43A(3) or 45C(3)(c) is non-compliant and is subject to an administrative sanction.”*

<sup>3</sup> S 43A is headed ‘Directives’. S43A(3) provides as follows:

*“(3) The Centre or a supervisory body may in writing, over and above any directive contemplated in subsection (1) or (2), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom the provisions of this Act apply, to—*

*(a) provide the Centre or that supervisory body, as the case may be—*

*(i) with the information, reports or statistical returns specified in the notice, at the time or at the intervals specified in the notice; and*

*(ii) within the period specified in the notice, with any document in its possession or custody or under its control;*

*(b) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;*

*(c) perform acts necessary to remedy an alleged non-compliance with this Act; or*

*(d) perform acts necessary to meet any obligation imposed by this Act.”*

*Compliance Returns (RCR) to the centre for each of its branches.” (par 3)*

- 5.4. Under the heading ‘reasons for imposing an administrative sanction’, the Centre extensively set out what is really the chronology relevant to the matter.
6. Each of the ‘administrative sanction’ documents (i.e. the documents attached to the notice of administrative sanction document marked annexures “A” to “E” respectively) contained the same wording (except for the branch name referred to and the numbering) as follows:<sup>4</sup>

**HAVING CONSIDERED ALL AVAILABLE FACTS, INFORMATION, FACTORS AND REPRESENTATIONS, THE FINANCIAL INTELLIGENCE CENTRE HEREBY IMPOSES THE FOLLOWING ADMINISTRATIVE SANCTION AND RECOMMENDATION:**

1. In terms of section 45C(3)(b) of the Financial Intelligence Centre Act 38 of 2001 (**FIC Act**), the Financial Intelligence Centre (**Centre**) hereby reprimands Pam Golding Properties (Pty) LTD, with registration number 2004/032256/07 (**Pam Golding**), for
  - 1.1.1 its failure to timeously submit a separate Risk and Compliance Return for its Pringle Bay branch, in terms of Directive 6 of 2023 on or before 31 May 2024 and
  - 1.1.2 not ensuring that each and every branch conducts its affairs with the Centre as a separate accountable institution having its own reporting and compliance obligations.

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<sup>4</sup> Annexure “A” for the Pringle Bay branch is quoted herein.

2. In terms of section 45C(a) of the FIC Act, a caution to ensure in future/ going forward the accountable institution does not repeat the non-compliance by not attributing FIC Act compliance obligations, pertaining to each Head Office and branch, separately.
  3. In addition, the Centre recommends that Pam Golding acquaints itself with the relevant provisions of the FIC Act, the Centre's *goAML* system, all Directives, Guidance Notes and Public Compliance Communications, all of which are available on the Centre's website at [www.fic.gov.za](http://www.fic.gov.za).
7. The appeal of Pam Golding is directed against the decisions in the notice of administrative sanction and the five notices of sanction; further, the appeal is against the decision to impose the sanction and against the sanction imposed.
8. The grounds of appeal of Pam Golding are:
- 8.1. as against the decision to impose the sanction - that the Centre's decisions were based on **(a)** an incorrect interpretation / reading of Directive 6 and on incorrect facts (Ground 1), and **(b)** the incorrect application of Public Compliance Communication (PCC) 5D to Pam Golding's branches (Ground 2).
  - 8.2. as against the sanction imposed, the decision was inappropriate having regard to the factors which must be considered under section 45C(6) of the FICA (read with sec 45C(5)).

**Legal principles in respect of the appeal:**

9. The test to be applied in an appeal against the imposition of an administrative sanction may differ depending on the nature of the appeal (**Hyde Park Auto v Financial Intelligence Centre** Case 12/3/5 par [6] – [8]), as it does *in casu*:
  - 9.1. The question / issue of **(a)** whether the appellant (Pam Golding) was ‘guilty’ or committed the transgression complained of (*in casu*, sec 62E read with sec 43A(3) and Directive 6), and **(b)** whether the formalities were complied with before the sanction was imposed (sec 45C(5) and (6)), are both “... *factual enquiries which must be dealt with as an appeal of fact would otherwise have been dealt with.*” (**Hyde Park Auto** par [6])
  - 9.2. The question / issue of the nature and scope of the administrative sanction “... *is an appeal against the exercise of a discretion exercised in the light of the requirements listed in sec 45C(2).*” The appeal board in such an appeal has limited power to interfere and can only do so where the Centre exercised its discretion capriciously, or upon a wrong principle, or where it has not brought its unbiased judgment to bear on the question or where it has not acted for substantial reasons. Absent a finding of the aforesaid, the test is whether the sanction was ‘excessive or startlingly inappropriate’. (**Hyde Park Auto** par [7] – [8])
10. As to the orders / decisions the appeal board may make, sec 45D(7) of the FICA provides that in the determination of an appeal:

- (7) The appeal board may—
- (a) confirm, set aside or vary the relevant decision of the Centre or supervisory body;  
or
  - (b) refer a matter back for consideration or reconsideration by the Centre or the supervisory body concerned in accordance with the directions of the appeal board.

**Brief overview of the background facts:**

11. During 2017, Pam Golding was assisted by the Centre to register its branches on the Centre's goAML platform.
12. But for cash threshold reports which are filed at branch level by the relevant Money Laundering Reporting Officer (due to the regulatory timing requirement thereof), all other reports which are submitted under the FICA have at all times been filed by Pam Golding head office under its Org ID. The Centre has at no stage taken issue with Pam Golding submitting reports pertaining to its branches under its Org ID.
13. Directive 6 was published in the Government Gazette on 31 March 2023. It was issued by the Centre under section 43A(3)(a) of the FICA (quoted in footnote 3 above).
14. Directive 6 required accountable institutions to submit information regarding their understanding of money laundering, terrorist financing and proliferation financing

risks through a '*risk and compliance return*' (RCR). Its terms are quoted more fully later herein.

15. Directive 6 as gazetted contained no Annexure "A" (although Directive 6 refers to such Annexure "A" – at par 2.3 of Directive 6). Accordingly, Pam Golding obtained a *pro forma* version of the RCR questionnaire from the Centre's website (RA, p 590, par 15; "RA2", p 612) which it utilised to prepare an excel spreadsheet which corresponded with the questionnaire. The spreadsheet was sent by Pam Golding to each manager responsible for its branches on 12 May 2023, and they were each requested to complete the questionnaire and return a signed copy to Pam Golding.
16. The information from the branches was consolidated and was used to complete Pam Golding's RCR, which was accordingly a consolidated RCR. Pam Golding submitted its consolidated RCR to the Centre on 30 May 2023.
17. On 5 October 2023, the Centre issued a notice that provided *inter alia* that:
  - 17.1. "4. All accountable institutions must submit a separate RCR for each Schedule item registered with the FIC. This means that a separate RCR must be submitted for each FIC Org ID held by an accountable institution. ... " (par 4 thereof) and
  - 17.2. "5. Only one RCR submission is permitted per accountable institution for each FIC Org ID held." (par 5 thereof)

18. On 6 October 2023, Pam Golding sent a letter to the Centre in respect of the notice received from the Centre on 5 October 2023. Pam Golding indicated *inter alia* that Pam Golding is the ‘main company’ registered with the FIC; Pam Golding has various branches, which are not separate legal entities, that are also registered on the goAML platform and ‘delegated’ under Pam Golding’s main ‘Org ID’ (which branches it listed in the letter with each branch name and Org ID number). Pam Golding informed the Centre that it had submitted its RCR prior to the 31 May 2023 deadline, and that the RCR had been completed on a consolidated basis. The Centre was asked in the letter to advise Pam Golding if it required further clarity.
19. The Centre did not respond to the 6 October 2023 letter.
20. On 22 November 2023, the Centre issued notices of intention to impose administrative sanctions. The notices were issued to each of the relevant branches (as opposed to Pam Golding) and indicated *inter alia* that the relevant branch “... is an estate agent as defined by the Estate Agency Affairs Act ... and an accountable institution as listed under Item 3 of Schedule 1 to the FIC Act ...”. (Pam Golding points out that this is incorrect).
21. On 1 December 2023, Pam Golding sent a letter to the Centre. Pam Golding again indicated that the branches were not separate legal entities and facts were set out which indicated that the branches were not independent of Pam Golding and did not conduct business for their own accounts. We do not deal with the

complete content of the letter. There are two aspects that are important in our view: **(a)** based on the wording of Directive 6, Pam Golding fairly contended that it had complied with Directive 6 and that its branches, which are not accountable institutions, were not required to submit separate RCR's, **(b)** Directive 6 and the notices that followed Directive 6 are far from paragons of clarity and, at best for the Centre, are ambiguous. (As is apparent from our findings below, we are of the view that Directive 6 is not in fact ambiguous).

22. The Centre replied on 12 December 2023, stating *inter alia* that:

The registration of accountable institutions with the [Centre] includes registration of all head offices and branches ...

In application of the principle, PCC 5D specifically requires that estate agents register "*per licence, being the fidelity fund certificate issued by the Property Practitioners Regulatory Authority (formerly referred to as the Estate Agency Affairs Board (EAAB)). The head office and each of its branches and each franchise holder of an estate agent will be regarded as separate accountable institution and will be required to register separately with the Centre.*"

23. The letter further referred to paragraph 8 of PCC 5D in respect of delegated structures which the Centre allows for an accountable institution with branch offices. We pause to point out the following in this regard: PCC 5D (although similar to its predecessor - PCC 5C - in various respects) is dated 17 October 2023, after the due date of the RCR's in respect of Directive 6; paragraph 8 of PCC 5D appears to permit the compliance officer at the head office level to assume responsibility for reporting at both levels (see par 8.5 and 8.6 of PCC 5D). The same applies with reference to PCC 5C. Despite the aforesaid, the

letter went on to allege that a RCR “... *submitted in respect of Directive 6 must be submitted per FIC Org ID held by an accountable institution ...[which] includes all entities registered within branch networks ...*”, and that it was the Centre’s ‘expectation’ that a separate RCR must be submitted for each Org ID (of each branch) with the required information segmented per branch.

24. The letter directed Pam Golding “... *in terms of section 43A(3)(c) to submit a separate risk and compliance return for each of its registered goAML Org ID’s*”, and asked Pam Golding to indicate whether its letter of 1 December 2023 constituted its representations (under section 45C(5)(d) of the FICA).

25. On 13 December 2023, the Centre issued to Pam Golding a formal ‘remedial directive in terms of section 43A(3)(c) of [the FICA]’ (the “**remedial directive**”).  
The remedial directive:

25.1. Asserted that Pam Golding was non-compliant with Directive 6 [because] it had “... *submitted a combined RCR for its Head Office and 45 goAML registered branches*”.

25.2. Directed Pam Golding in terms of sec 43A(3)(c) of the FICA, within 30 calendar days, to “... *remediate its non-compliance with Directive 6...*” as follows:

2.1 Submit individual risk and compliance returns for each of its registered goAML ORG ID’s. (Separate returns must be submitted for the Head Office and each of its branches).

26. Pam Golding points out that the remedial directive “*is notably different from what was required under Directive 6.*” We agree. A plain reading of Directive 6 – which we address below – does not require / prescribe what is set out in par 2.1 of the remedial directive.
27. Further correspondence was exchanged between the parties in December 2023 and January 2024. The Centre granted Pam Golding an extension to 9 February 2024 to comply with the remedial directive (and a second remedial directive to this effect was issued).
28. On 26 January 2024, Pam Golding’s attorneys sent a letter to the Centre which was intended *inter alia* to serve as Pam Golding’s representations. We do not intend to rehash the content thereof.
29. Pam Golding complied with the remedial directive and submitted a separate RCR for each of its branches on 1 February 2024.
30. On 26 August 2024, the Centre sanctioned Pam Golding, as has been addressed in the introduction section of this decision.

**Directive 6 of 2023:**

31. The essence / main thrust of the complaint of the Centre regarding the non-compliance of Pam Golding with the FICA is that:

31.1. Pam Golding failed to comply with Directive 6;

31.2. before the due date of 31 May 2023;

31.3. to submit separate RCR's to the Centre;

31.4. for each of its branches.

(see: notice of sanction, par 3, p 7)

32. The starting point in this regard is to discern whether Directive 6 required Pam Golding (as an accountable institution) to do that which the Centre alleges Pam Golding failed to do. In other words, is Pam Golding 'guilty' of the transgression as the Centre found? The test / question is factual.

33. Due to the central importance of the wording of Directive 6, we quote the entire directive below (see: "**RA1**", p 608). On the first page under the heading "DIRECTIVE 6 of 2023" the following is stated: "*Submission of a risk and compliance return to the Financial Intelligence Centre by specified accountable institutions that are designated non-financial businesses and professions*".

34. Directive 6 is comprised of four parts: 'Purpose of the Directive'; 'Directive'; 'Format and frequency of risk and compliance return'; and 'Effective date and non-compliance'. The body of Directive 6 reads as follows:

1. Purpose of the Directive
  - 1.1 This Directive serves to inform all accountable institutions that are designated non-financial businesses and professions as specified in this Directive, that they must submit information regarding their understanding of money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risks and their assessment of compliance with obligations in terms of the FIC Act to the FIC through a risk and compliance return.
  - 1.2 The information obtained from the risk and compliance return will assist the FIC in forming an understanding of the levels of risk awareness and compliance of the responding accountable institution with the FIC Act and in identifying the ML, TF and PF risks facing different accountable institution sectors as designated in Schedule 1 to the FIC Act.
2. Directive
  - 2.1 This Directive applies to accountable institutions that are designated financial businesses and professions and as listed in items 1, 2, 3 and 9 of Schedule 1 to the FIC Act.
  - 2.2 The completion of the risk and compliance return is compulsory for all accountable institutions specified in this Directive.
  - 2.3 Accountable institutions must answer all questions in the risk and compliance return questionnaire as specified in Annexure "A".
  - 2.4 Accountable institutions must answer all questions based on its understanding of ML, TF and PF risks and its implementation of current risk-based controls in compliance with the obligations set out in the FIC Act.
3. Format and frequency of risk and compliance return
  - 3.1 The risk and compliance return covers the reporting period from 1 April 2022 to 31 March 2023, both dates inclusive.
  - 3.2 The risk and compliance return must be submitted to the FIC no later than 17:00 on Wednesday, 31 May 2023.
  - 3.3 The risk and compliance return is an automated return. Accountable institutions are required to populate the information directly via a link as made available on the FIC website.
4. Effective date and non-compliance
  - 4.1 This Directive is effective from the date of publication in the government gazette.

- 4.2 Non-submission of the risk and compliance return will be considered non-compliance with this Directive and may result in an administrative sanction, in accordance with section 62E read with section 43A(3) of the FIC Act.”

## The appeal

35. The main thrust of the case for Pam Golding is that it complied with Directive 6:
- (a) Pam Golding timeously submitted a (consolidated) RCR; and (b) Pam Golding was not required to submit separate RCR’s for each of its branches. Pam Golding contends *inter alia* that:
- 35.1. Only accountable institutions were required to submit a RCR under Directive 6;
- 35.2. Pam Golding is an accountable institution, and it submitted a consolidated RCR before the due date;
- 35.3. Pam Golding’s branches are not accountable institution/s;
- 35.4. In consequence, the Centre erred in finding that the branches were required in terms of Directive 6 to submit separate RCR’s.
36. The Centre argues in its heads of argument that each branch of Pam Golding is an accountable institution. We disagree:

- 36.1. An 'accountable institution' is defined in the FICA as follows:  
***“accountable institution”*** means a person referred to in Schedule 1
- 36.2. Pam Golding is an accountable institution under item 3 of Schedule 1 to the FICA which provides: *An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).*
- 36.3. The aforesaid Act has been repealed and replaced with the Property Practitioners Act, Act 22 of 2019.
- 36.4. The Centre in PCC 56 has indicated *inter alia* that when interpreting Item 3 of Schedule 1 to the FICA, the reference to “*estate agent as defined in the Estate Agency Affairs Act*”, now includes “*property practitioners as defined in the Property Practitioners Act*” limited to persons who perform activities as defined in the now repealed definition of estate agent.
- 36.5. The branches are not accountable institutions as they are not natural or juristic persons; do not hold a fidelity fund certificate, do not operate a bank account, do not operate a trust account, and are not registered as property practitioners under the Property Practitioners Act. None of the branches conduct business for their own account.
- 36.6. The registration of the branches on the Centre’s goAML platform does not render the branches ‘accountable institutions’ as envisaged in the FICA. Neither can the guidance documents issued by the Centre,

whether PCC 5C or PCC 5D (the latter which in any event post-dates the deadline for Directive 6) transform something which is not an accountable institution into one. The FICA defines what an ‘accountable institution’ is. Further, the Centre cannot expand on / amend the list of accountable institutions. (sec 73 of the FICA; **Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others** 1999 (1) SA 374 (CC) par [58]).

37. Pam Golding is an accountable institution. The branches of Pam Golding are not separate accountable institutions.
38. The wording of Directive 6 is clear. It is directed at and binding on accountable institutions – for example: the “*Directive serves to **inform all accountable institutions** ... that **they must submit information** regarding **their understanding** of ...” (par 1.1); “*The information obtained from the [RCR] will assist the FIC in forming an understanding of the levels of risk awareness and compliance of the **responding accountable institution** with the FIC Act ...” (par 1.2); “*This **Directive applies to accountable institutions** ... as listed in items 1, 2, 3 and 9 of Schedule 1 to the FIC Act.*” (par 2.1); “... completion of the [RCR] is **compulsory for all accountable institutions** specified in this Directive.” (par 2.2); “**Accountable institutions** must answer all questions ...” (par 2.3 and 2.4) *et cetera*. (our emphasis)**
39. Directive 6 does not provide for, state or require a separate return for each branch. It requires the accountable institution (Pam Golding) to submit a RCR.

This is what Pam Golding did, having gathered information from its branches and having provided a consolidated RCR to the Centre.

40. Paragraph 3.2 of Directive 6 required the accountable institution to submit the RCR to the Centre by no later than 17h00 on Wednesday 31 May 2023. Pam Golding submitted the consolidated RCR on 30 May 2023. On a plain reading of Directive 6 read together with the relevant facts of this matter, Pam Golding complied with the terms of Directive 6. The Centre erred in finding that Pam Golding had breached / not complied with Directive 6. For this reason alone, the appeal of Pam Golding must succeed.
  
41. The Centre places store in various notices and letters that post-date the deadline of Directive 6. In our view, the various notices and correspondence issued after the date of the deadline for the submission of the RCR in terms of Directive 6 do not assist the Centre. In fact, they demonstrate that (on a best-case basis for the Centre) Directive 6 is unclear regarding the requirement / directive that each branch is required to submit a separate RCR<sup>5</sup> - if Directive 6 had been clear there would have been no need for such 'clarifying' correspondence.
  
42. This implicates rule of law questions: "... *the rule of law embraces some internal qualities of all public law: that it should be certain, that is, ascertainable in advance so as to be predictable and not retrospective in its operation; and that it be applied equally, without unjustifiable differentiation. ...*" (**Pharmaceutical**

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<sup>5</sup> We have already found that on a plain reading of Directive 6 there is no such stated requirement.

**Manufacturers Association of SA: In re Ex parte President of the Republic of South Africa** 2000 (2) SA 674 (CC) at par [39] quoting from de Smith, Woolf and Jowell; see also: **Veldman v Director of Public Prosecutions, Witwatersrand Local Division** 2007 (3) SA 210 (CC) at par [26], footnotes omitted: “... *That legislation will affect only future matters and not take away existing rights is basic to notions of fairness and justice which are integral to the rule of law, a foundational principle of our Constitution. Also central to the rule of law is the principle of legality which requires that law must be certain, clear and stable. Legislative enactments are intended to “give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.”*)

43. In our view, the Centre erred in finding that Pam Golding had acted in breach of the FICA and Directive 6. Having found that the Centre erred in respect of its findings regarding Pam Golding’s transgression of the FICA and Directive 6, the appeal has to be upheld, and it is not necessary for us to determine the issue regarding the appeal ground in respect of the nature and scope of the administrative sanction.

### **Fees and costs**

44. We intend to set aside the decision of the Centre. Accordingly, the fees paid by Pam Golding in respect of the appeal must be refunded to Pam Golding. (sec 45D(10(a)))

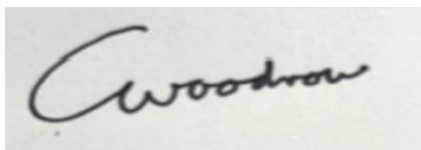
45. Pam Golding seeks costs. We agree with the Centre that such an order cannot be granted. (sec 45D(7))

### **Order**

46. We accordingly grant the following order:

1. The appeal is upheld.
2. The notice of administrative sanction and five administrative sanctions issued by the respondent on 26 August 2024 and the decisions therein are set aside.
3. The fees contemplated in section 45D(1)(b) of the FICA paid by the appellant are to be refunded to the appellant.
4. No order as to costs.

Signed on the 28<sup>TH</sup> day of March 2025.

A photograph of a handwritten signature in black ink on a light-colored surface. The signature is written in a cursive style and reads "C Woodrow".

**C WOODROW SC**

With the Appeal Board also consisting of:

MF Legodi J (chair)

Z Nkubungu-Shangisa