

Case of

Gabriel & White (f) [106620]
Argyll PA29 6 XF

Held on

Wednesday 10 June 2015

At

Surveyor Court, Westwood Way, Coventry

Panel

Paul Housego (Lay Chair)
Catherine Audcent (Lay Member)
Andrew Winscom (Member)

RICS Representative

Vicki Buckley

Legal Assessor

Stephen Murfitt

The formal charges are:

1. Gabriel & White (the firm) did not submit in a timely manner or at all such information about its activities as the Regulatory Board may reasonably require in the form of an Annual Return requested by RICS from the firm on 14 May 2014.

Introduction

1. Gabriel & White registered for regulation by RICS in 2007. Its Contact Officer is Mr Christopher Gabriel MRICS.
2. Firms regulated by RICS are required to complete and submit an Annual Return when requested to do so by RICS. The Annual Return provides detailed information to RICS and is analysed by RICS as part of its risk based approach to regulation.

3. The Regulatory Board considers the Annual Return process to be fundamental to RICS discharging its role as the Regulator of the profession and it has determined that firms failing to submit an Annual Return by the due date will be deemed to have breached Rule 14 of the Rules of Conduct for Firms 2007. The Regulatory Board established a fixed penalty process for such a breach which is set out in RICS Sanctions Policy.
4. Since its registration in 2007, Gabriel & White completed and submitted Annual Returns by the due date in 2009, 2010, 2011, 2012 and 2013. The firm failed to submit an Annual Return for 2014.
5. On 19 June 2014 a fixed penalty fine of £300 was imposed on the firm which was increased to £500 on 21 July 2014 in accordance with the Sanctions Policy.

Burden and standard of proof

6. The RICS is required to prove the allegations to the civil standard; that it is more likely than not that any event material to those allegations occurred. 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 Mr Gabriel, as Contact Officer, to prove anything. The Panel has in mind throughout its deliberations that the right to practise a profession is involved in these proceedings and proceeds upon the basis that the Human Rights Act 1998 will apply. It bears in mind in particular rights to a fair trial and to respect for private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated within UK law by that Act. The question of whether or not any facts admitted or found proved give rise to liability to disciplinary action is a matter for the Panel's judgment.

Preliminary matters

7. Mr Gabriel did not attend the hearing. The Panel was referred to the service of the papers. The legal assessor advised the Panel that the provisions as to service set out in rule 23(b) of the Disciplinary, Registration and Appeal Panel Rules of 01st April 2009 have been complied with, as the notice of the hearing, with the other documents required to be supplied, were sent by special post to Gabriel & White on 5 May 2014, so giving more than the required 28 days' notice of this hearing. Accordingly the Panel found that the notice of hearing was properly served.

8. The Panel next considered whether to proceed in the absence of Mr Gabriel. The legal assessor's advice was sought and accepted. The panel was referred to the case of R-v-Jones [2002] UKHL 5, which Tait v The Royal College of Veterinary Surgeons (RCVS) [2003] UKPC 34 states is also applicable to professional conduct proceedings.
9. Where a person is ill it will usually be unfair to proceed in his absence. However there is a public interest in conducting professional regulatory proceedings expeditiously and the recollection of witnesses may be impaired by delay. The Panel must consider matters such as whether the person had requested an adjournment, whether the person would be likely to attend any adjourned hearing, or whether, in all the circumstances, Mr Gabriel had voluntarily absented himself from the hearing. A decision to proceed in the absence of the person facing the allegation should be taken with great care, and caution. The risk of prejudice to the individual must be carefully weighed, and the conclusion that someone has deliberately and voluntarily absented requires the Panel to find that there is a clear and unqualified - unequivocal - intention not to attend.
10. In this case the Panel has decided to proceed in the absence of Gabriel & White. None of the matters indicating that there should be an adjournment were present.
11. No response having been received from the Firm, it was taken to have denied the allegation.

Evidence

12. The Panel has perused the RICS solicitor's bundle of documents, running to 21 pages.

Findings of fact

13. On 14 May 2014 RICS contacted the firm by email requesting completion and submission of the Annual Return by 13 June 2014. A reminder was sent by RICS on 28 May 2014 and a letter marked final reminder on 10 June 2014.
14. On 19 June 2014 a fixed penalty fine of £300 was imposed on the firm which was increased to £500 on 21 July 2014 in accordance with the Sanctions Policy.
15. On 21 August 2014 Mrs Buckley sent an email to Mr Gabriel reminding him of his obligation to file the Annual Return.

16. Rule 14 of the Rules of Conduct for Firms 2007 provides that a Firm shall submit in a timely manner such information about its activities, and in such form, as the Regulatory Board may reasonably require.

17. The Panel is satisfied that the firm in failing to submit its Annual Return is in breach of Rule 14 of the Rules of Conduct for Firms 2007 and finds the charge proved.

Disciplinary Action

18. On the basis of the facts found the Panel had to decide whether or not Gabriel & White is liable to disciplinary action. In coming to its conclusion the Panel accepted the advice of the legal assessor. This question is one for the Panel's judgment. The Panel decided that the matter found proved was of a serious nature and accordingly finds Gabriel & White liable to disciplinary action in accordance with By-law B5.3.2 (c).

Mitigation

19. There has been no previous disciplinary finding against Gabriel & White save as to the imposition of the two fines mentioned above which have not been paid. Mr Gabriel has not attended the hearing to advance any mitigating circumstances.

Decision as to sanction

20. 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.

21. The Panel paid careful heed to the advice of the legal assessor (delivered in open forum), and to the indicative sanctions guidance of the RICS. It considered carefully the mitigating and aggravating factors of this case.

22. The Panel had decided that the Firm was liable to disciplinary action. Having done so it first has to decide whether to impose a sanction, and if it so decides the Panel commences at the lowest sanction, and only if it decides that sanction is not appropriate does it move to the next level of sanction. Having arrived at a sanction that is minded to impose, the Panel then reviews the next sanction above so as to satisfy itself that this would be too severe a sanction. The Panel bears in mind that more than one sanction may be imposed. If

conditions are to be imposed they must be proportionate, workable and address the issues raised in these proceedings.

23. The Panel considered that the following aggravating factors were present:

1. The failure to pay the penalty fine imposed by RICS.
2. A failure to understand the importance of regulatory compliance.
3. A failure to understand the fundamental role of RICS as to its risk based approach to regulation and the need to protect the public interest.
4. A failure to respond to any communication from RICS concerning this matter.

24. The Panel considered the matters too serious for no sanction to be imposed. The Panel does not consider a Caution or a Reprimand sufficient having regard to the seriousness of the case. The Panel does not consider that the imposition of undertakings would be appropriate to protect the public. The imposition of a fine would not be appropriate having regard to the Firm's serious breaches of professional obligations as found proved by the Panel.

25. The Panel takes into account that RICS has no statutory powers to insist on the filing of Annual Returns and relies on the co-operation of its registered firms to provide important information to RICS which is required by RICS as part of its risk based approach to regulation.

26. The Panel is mindful of the need, stated in the Sanctions Policy, to demonstrate to society and other member firms that RICS takes firm action to protect the public interest and to promote regulatory compliance. The Rules as to the filing of Annual Returns are in place to assist RICS with its obligations as to discharging its role as regulator of the profession. The need to protect the public and the reputation of the profession is paramount, and in these circumstances the Panel has determined that there is no sanction short of removing the firm's registration for regulation. The Panel therefore determined that the firm's registration be removed from regulation.

Publication and Costs

27. 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, published in Modus, and in a newspaper local to the practice. The Panel sees no reason for departing from the normal practice in this case. 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.

28. The Panel orders that this decision be published on the RICS website, in Modus and in a newspaper local to the Firm.

29. The RICS presenting solicitor asked for costs, and had provided a schedule to Mr Gabriel in advance of the hearing.

30. The Panel considered carefully the costs sought. The figure for the hearing is the average cost of a hearing day, and the Panel has made an allowance because the Panel has determined three cases today.

31. The Panel orders that the Firm pay to RICS costs of £1300.

Appeal

32. The Firm 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 2009.

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