

Disciplinary Panel Hearing

Case of

**Mr John Russell FRICS and Jack Russell Associates
Seaton, Devon, EX12**

On

Monday 2 July 2018

By telephone

Panel

Helen Riley (Surveyor Chair)
Gregory Hammond (Lay Member)
Imran Benson (Lay Member)

Legal Assessor

Alastair McFarlane

Hearing Officer

Emma Jones

The formal charge against Mr Jack Russell is:

1. That he has failed to act with integrity at all times and to avoid any actions or situations that are inconsistent with his professional obligations,

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

Particulars

- a. On 21 March 16 Mr Jack Russell failed to ensure that he and will confirm covered by an appropriate policy of professional indemnity insurance (PII).

- b. Between 9 July 2015 and 28 June 2017 Mr Russell submitted a false Annual Return to RICS dishonestly declaring that he had PII cover in place to cover his professional practice on March 21, 2016 when he did not hold such PII cover, and declaring that the content of the said Annual Return was true Mr Russell is therefore liable to disciplinary action under RICS Bye-law B5.2.2 (a) and (c).

The formal charge against Jack Russell Associates is:

2. That the Firm has failed to ensure that all previous and current professional work is covered by adequate and appropriate professional indemnity insurance cover which meets the standards approved by the Regulatory Board, Contrary to Rule 9 RICS Rules of Conduct for Firms 2007

Particulars

On 21 March 2016 the Firm carried out a valuation on behalf of the client at a time when the firm had failed to ensure an adequate and appropriate professional indemnity insurance cover which meets the standards approved by the Regulatory Board was in place.

The Firm is therefore liable to disciplinary action under RICS Bye-law B5.3.2 (c).

DETERMINATION

Representation and Service

Preliminary matters – Hearing on the papers

1. The case of Mr. Jack Russell, the Relevant Person, had been referred for consideration on papers in the absence of the parties, pursuant to Rules 43a of the Disciplinary, Registration and Appeal Panel Rules 1 April 2009 (Version 7, 1 January 2017) (“the Rules”).
2. The Panel first considered the issue of service of the Notice of Hearing. The Legal Assessor reminded the Panel that:

- The case had been referred to the Disciplinary Panel for consideration in accordance with Rule 43(a), that is at a hearing on the papers;
 - Rule 43a(a) requires that not less than 28 days' notice of a paper hearing be given;
 - Rule 43a(d) provides that there will be no oral hearing of the case unless the Panel decides that it is necessary in the interests of justice or in the public interest to refer the case for an oral hearing.
3. The Panel received a witness statement from Mrs. E Jones, Regulatory Tribunal Executive for RICS, dated 27 June 2018. The statement confirmed that the Notice of Hearing had been sent to the Relevant Person on 22 May 2018, to the postal address held on RICS' system. The email was exhibited to the statement of Mrs. Jones.
 4. Mr. Russell has not requested an oral hearing. Further, in his letter dated 12 May 2018 Mr. Russell indicated that the paper hearing was appropriate as he had never contested the charges.
 5. The Panel noted the letter from Jan Brewer, solicitor acting for RICS, dated 6 June 2018, to Mr. Russell, in which RICS confirmed that as Mr. Russell had signed and agreed statement of facts, that document and other documents would be placed before the panel for a paper hearing.
 6. The Panel was satisfied that the requirements of the Rules for the case to be heard on the papers were satisfied. There had been no request from Mr. Russell for an oral hearing. The Panel was further satisfied that the matter could properly be dealt with on the papers and that it was not necessary in the interests of justice or the public interest to refer the case for an oral hearing.

Documentation

7. The Panel had before it a bundle of documents from RICS, numbered pages, 1-51; An "Agreed Facts" Document, signed by Mr. Russell on his behalf and on the Firm's behalf, and by Ms. Brewer on behalf of RICS; a letter dated 12 May 2018 from Mr. Russell and RICS' "Submissions as to Liability to Disciplinary Action" and "Submissions as to Sanction".

Background

8. Mr Russell has been a Fellow of RICS since 1 January 2000, is a sole practitioner and the Director/Principal of the firm Jack Russell Associates ("the Firm").
9. The charges against Mr Russell and the Firm are admitted by Mr Russell on his own behalf and of the Firm. Further, he accepts that both he and the Firm are liable to disciplinary action as a result of the admitted breaches of RICS' Rules of Conduct for Members Rule 3 and in breach of RICS Rules of Conduct for Firms, Rule 9.
10. Mr Russell was at all relevant times required to have Professional Indemnity Insurance ("PII") under the RICS' Rules of Conduct. Mr Russell was carrying out surveying activities without any PII and had done so in March 2016. He was required to complete Annual Return in 2015, 2016 and 2017 and state whether he had PII cover. Mr Russell did complete his Annual Return, but falsely indicated that he had PII cover in 2016, when, in fact, he did not. This false declaration was a dishonest representation to RICS as his regulator intended to induce RICS to believe that he had PII cover as required.
11. On 21 March 2016 Mr Russell carried out an inspection of premises in Kilve in Somerset on behalf of clients. Those clients contended that Mr Russell had acted negligently and a legal dispute arose between the parties. In correspondence to his client's solicitors, Mr Russell admitted that the firm did not have PII cover. In a letter, dated 15 April 2017, Mr Russell confirmed that at the time of the survey he carried out on behalf of the clients, the Firm was not insured and stated that he "carried out a limited number of surveys to supplement" his pension income. On 6 May 2017, Mr Russell confirmed the position and that he had advised RICS that insurance cover was in place on his annual return. He accepted that this was incorrect and stated that "no doubt I will be disciplined by the RICS with expulsion."
12. Mr Russell's former clients made a complaint to RICS on the basis of his admissions regarding the lack of PII cover in a letter dated 26 April 2017.

Findings of fact

13. The Panel carefully considered the evidence it received. This consisted of the large volume of documentary evidence.
14. The Panel reminded itself that the burden of proving the charges was on RICS alone and that the standard of proof was the ordinary civil standard, namely the balance of probabilities. The Panel accepted the advice of the Legal Assessor.
15. The Panel noted that Mr. Russell had made full admissions on his own behalf and on behalf of the Firm to the charges. The Panel was satisfied both, on the documentary evidence before it, and on the basis of Mr. Russell's admissions that both charges were proved.

Liability for Disciplinary Action

16. RICS submitted that professional indemnity insurance is important to protect members of the public and clients of any registered firm. It contended that as a result of the breach of the requirement to obtain PII, Mr. Russell and the Firm were operating in an environment where there was no protection for clients. Further, by providing inaccurate information to RICS in the Annual Return, Mr. Russell and the Firm had frustrated the ability of RICS to regulate the Firm effectively. RICS, as the regulator, was dependent on members to provide timely accurate and honest information. Mr. Russell and the Firm failed to do this. It contended that were a regulator not to take such breaches seriously, there would be a risk that the authority of RICS as a regulator would be undermined and the members of the public would lose confidence in RICS and the profession at large. RICS submitted that such behaviour was self-evidently sufficiently serious to render Mr. Russell and the Firm liable to disciplinary action.
17. Mr. Russell on his behalf and on behalf of the Firm accepted that the breaches rendered him and the Firm liable to disciplinary action.

18. The Panel reminded itself that liability to disciplinary action was a matter for the judgment of the Panel. It was satisfied that Mr. Russell and the Firm's conduct amounted to a serious falling short of his professional obligations. The Panel was concerned that such behaviour presented a clear risk of harm to the public and that the dishonest behaviour to his regulator undermined public confidence in the profession. In the circumstances, the Panel had no doubt that Mr. Russell's conduct and that of the Firm was sufficiently serious to render both liable to disciplinary action.

Sanction

19. The Panel next considered sanction. It noted the written submissions of RICS and the comments from Mr. Russell. It had regard to the RICS Sanctions Policy and bore in mind the overriding principle of proportionality. The Panel considered the appropriate and proportionate sanction in relation to Mr. Russell and the Firm separately and noted the different charges each faced, but considered in conclusion that in this case it was artificial to draw any real distinction between them.
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 RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.
21. The Panel considered carefully the mitigating and aggravating factors of this case as well as the issue of proportionality in weighing up the most appropriate response.
22. The Panel considered that the following mitigating factors were present:
- Mr Russell has admitted the charges at the outset
 - Mr Russell has no previous regulatory history
 - He has co-operated with RICS' disciplinary process
 - He has a long and otherwise unblemished career
 - He has expressed remorse

- He only had a small number of clients.
23. The Panel considered that the following aggravating factors were present:
- A potential civil claim has arisen from a client
 - The behaviour presented a clear risk of harm to the public
 - The conduct involved dishonest representations to his regulator.
24. The Panel reminded itself that acting honestly and with integrity is a fundamental tenet of the profession and that the reputation of the profession is more important than the fortunes of any individual.
25. The Panel considered the matters are too serious for no sanction at all to be imposed. It considered the sanctions in ascending order of seriousness.
26. The Panel considered that neither a Caution nor a Reprimand were sufficient to mark the seriousness of the behaviour and to adequately maintain the reputation of the profession and that a fine would also fail to protect the public.
27. The Panel also considered that there were no sufficient or workable conditions that would adequately address the seriousness of the behaviour and the public interest.
28. The Panel carefully considered whether it was necessary to expel Mr Russell and to remove the Firm's registration from RICS. It had specific regard to the factors listed at Paragraph 20 of the Sanctions Guidance and the guidance on dishonesty. In the Panel's judgment, the charges were fundamentally incompatible with continued membership of RICS and therefore it was satisfied that expulsion and deregistration were the only proportionate and appropriate sanctions.

Publication

29. The Panel has considered the policy on publication of decisions, The Sanctions Policy Supplement 3 - Publication of Regulatory Disciplinary Matters, and the presumption of publication. It saw no reason to depart from this presumption and Mr. Russell had made no observations on this issue. This decision will be published on the RICS website and in the RICS magazine Modus.

Costs

30. RICS made an application for costs in the sum of £600. Mr. Russell detailed that he is 80 years old and has extremely limited means. The Panel considered that it was just and reasonable, given his limited financial circumstances, early admission and full co-operation, to order that he pay costs in the sum of £200.

Appeal Period

31. Mr. Russell and the Firm have 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 59 of the Rules.
32. In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days, from the service of the notification of the decision, to require a review of this Decision.