

Disciplinary Panel Hearing

Case of

**Mr MATTHEW HADLEY AssocRICS [1255609]
Knights Surveyors and Valuers
Stratford-Upon-Avon, Warks, CV37 8NB**

On

Tuesday 6 – Friday 9 November 2018

At

RICS 55 Colmore Row, Birmingham

Panel

Sally Ruthen (Panel Chair)

Richard Bayly (Lay Member)

Helen Riley (Surveyor Member)

Legal Assessor

Christopher Hamlet

RICS Presenting Officer

Kelly Sherlock

Respondents' Representative(s)

Mr Hadley, representing himself

Witnesses

Mr Matthew Sendall-King

Hearing Officer

Jae Berry

Introduction/Summary

1. This case has been referred to a Panel amid concerns that between February and June 2016 the Respondent had posted a series of offensive comments of a racist/offensive nature on his publicly accessible Facebook profile.
2. In addition, it was alleged that on 24 April and 2 May 2017 the Respondent had advertised his services on Facebook as a property valuation expert, despite having his registration revoked. This followed an exchange of correspondence with RICS from February 2017 confirming that he had been de-registered from the Valuer Registration Scheme due to non-payment of his annual fee and should stop all relevant work immediately. The Respondent wrote to RICS on 19 May 2017 stating that he had not received any letters or emails regarding valuer registration. RICS alleges that that statement was dishonest.
3. Finally, it is alleged that the Respondent Firm failed to have in place adequate and appropriate professional indemnity cover from July 2017. In the course of enquiries being made by RICS into that issue, the Respondent is said to have produced and provided RICS with a false document purporting to show that insurance cover was in place, when it was not.

Charges

4. The formal charges against Matthew Hadley are that:
 1. **Between 28 February and 25 June 2016, he posted public comments on his social media account that were offensive and/or racist in their content thereby:**
acting with a lack of integrity contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

and/or

he acted in a manner that was not befitting membership of RICS contrary to Bye-Law 5.2.1 (a). Mr Hadley is therefore liable to disciplinary action under RICS Bye-law 5.2.2(a).
 2. **On 24 April and 2 May 2017, Mr Hadley advertised his valuation services to the public when he knew or ought to have known that he was not entitled to do so thereby acting with a lack of integrity contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2(c).**

3. On 19 May 2017, Mr Hadley acted dishonestly in making a statement to RICS that he knew or ought reasonably to have known was false and/or misleading. This is contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (a) or (c).

In the alternative,

4. On 19 May 2017, Mr Hadley failed to act with integrity in making a statement to RICS that he ought reasonably to have known was false and/or misleading. This is contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (a) or (c).
5. On 26 September 2017, Mr Hadley acted dishonestly in presenting a false document to RICS purporting to show that insurance was in place for his Firm. This is contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (a) or (c).

5. The formal charges against the Firm are that:

6. The formal charge against Knights Surveyors & Valuers is that between 18 July 2017 and 29 September 2017 the Firm failed to have in place adequate and appropriate professional indemnity insurance cover. This is Contrary to Rule 9 of the Rules of Conduct for Firms 2007. Knights Surveyors & Valuers is therefore liable to disciplinary action under RICS Bye-law 5.3.2 (c).

Preliminary issues

6. RICS made an application that insofar as references were made to matters of health in the hearing, they should be considered in private. It was submitted however that where possible, the hearing should remain in public. Mr Hadley supported the application.
7. The Panel were advised by the Legal Assessor that whilst the general rule is that all disciplinary hearings are conducted in public, there is provision under Rule 25 to hear all or part of the hearing in private in exceptional circumstances. What circumstances could properly be considered exceptional was a matter for the Panel's judgment on the particular facts of the case, but they were advised that it was in keeping with the practice of other regulatory tribunals to consider matters of health in private session.

8. The Panel concluded that whilst they had a duty to act in the public interest, and that included the need to conduct the hearing in an open forum, it was appropriate to go into private where issues of health were under consideration.

Response

9. The Respondent made qualified admissions to Charges 1 – 5 and an unqualified admission to Charge 6.
10. With regard to Charge 1, he accepted with the benefit of hindsight that he had made the postings, and that they were offensive and/or racist. However, he stated he was suffering from mental ill health at the time and had no recollection of making the comments.
11. With regard to charges 2-4, he accepted with the benefit of hindsight that he had advertised his services to the public at a time when his registration had been revoked. However, he again stated that he had no recollection of doing so, or of any correspondence from RICS that alerted him to his de-registration. He denied any consequential dishonesty as alleged at charge 3, or lack of integrity as alleged at charge 4.
12. With regard to charge 5, he accepted with the benefit of hindsight that he did not have in place appropriate insurance cover, but stated he held a genuine belief at the time that he did. He specifically denied that the insurance cover note provided to RICS was altered by him in any way. As a consequence, he denied dishonesty as alleged.
13. With regards to Charge 6, this was admitted on behalf of the Firm, but he stated again that he held a genuine belief at the time that adequate insurance was in place.

Evidence

14. The Panel considered a bundle of documents produced by RICS. The Respondent was given an opportunity to confirm that any material he wished to rely upon was either within that bundle or would be produced independently by him in due course.
15. The Panel heard oral evidence from Mr Sendall-King, Director of First Insurance, on behalf of RICS and from the Respondent himself.

Submissions

16. Ms Sherlock on behalf of RICS and Mr Hadley on his own behalf gave oral submissions to the Panel on the facts. The panel took both into account during their deliberations.

Burden and standard of proof

17. 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. They were 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 or Firm to prove anything.

18. The question of whether or not any facts admitted or found proved gave rise to liability to disciplinary action is a matter for the Panel's judgment and would be considered separately once a determination had been reached on the facts.

Health

19. In view of the assertions made by the Respondent that he was suffering from adverse health at the time of the index events, the Panel received advice from the Legal Assessor as to the proper approach to this issue.

20. The Panel were advised that where an issue of health is raised as a defence to the charges, an evidential burden is placed upon the Respondent to produce material in support of that, though the burden of proving the charges remains with RICS. Further, whilst adverse health, if made out, may readily mitigate acts of misconduct, it would only serve as a defence if the Panel were satisfied that there was a causative link between the two.

21. After considering the advice, the Panel concluded that whilst there was clear evidence that the Respondent was suffering from a variety of adverse health conditions at the time of these events, in addition to significant stressors in his life, they were not satisfied that there was a

causative link between this and the conduct alleged, such that they represented a defence to the charges.

22. Further, the Panel considered it incredible that the Respondent would have no memory at all of any of the events in question, as he asserts, over the period since February 2016 but clear and specific memories of other events, including telephone conversations with the RICS investigator, around the same period of time. The Panel were mindful that the Respondent had experienced a number of episodes of mental ill health before and after the index events, with no apparent impact on his memory, and there was little or no evidence of any fresh condition arising at the time of the events that would explain a loss of memory or other cognitive dysfunction which would serve as a defence to the allegations.

Dishonesty/Integrity

23. Having concluded that adverse health did not excuse or explain the Respondent's conduct, the Panel received further advice from the Legal Assessor on the concepts of dishonesty and integrity.
24. As regards dishonesty, the Panel were referred to the legal test for dishonesty as set out in the Supreme Court authority of *Ivey v Genting Casinos [2017] UKSC 67* being:
- a. What were the facts the Respondent knew or believed, (even if that belief was unreasonable); and
 - b. Was the Respondent dishonest according to the (objective) standards of ordinary, decent people?
25. As regards integrity, the Panel were referred to the combined Court of Appeal decision in *Wingate and Evans v SRA; SRA v Malins [2018] EWCA Civ 366*:
- 100 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.*
26. The Panel were additionally referred to RICS Standards and the attempt therein to define integrity. They were advised that a decision as to whether the Respondent's conduct

represented a lack of integrity not befitting a member of the profession was a question for their judgment.

References

27. The Respondent initially provided a number of references at the facts stage. Ms Sherlock, on behalf of RICS, did not object. The Respondent confirmed that none of the referees were aware of the allegations, the disciplinary hearing, or the purpose of the reference. The Panel observed that all of those references appeared to be directed at employment positions rather than a regulatory hearing and none commented upon the Respondent's standard of honesty or integrity.
28. As such, whilst the Panel were content to take account of the references, their relevance to the charges under consideration and the weight that could be attached to them, was limited.
29. After the Panel retired to consider the facts, the Respondent provided a further reference from a work colleague which did refer to his integrity and honesty. The Panel took account of that reference in the course of their deliberations.

Decision on the Charges

Member

30. The formal charges against Matthew Hadley are that:
 1. **Between 28 February and 25 June 2016, he posted public comments on his social media account that were offensive and/or racist in their content thereby:**
acting with a lack of integrity contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-law 5.2.2 (c)

and/or

he acted in a manner that was not befitting membership of RICS contrary to Bye-Law 5.2.1 (a). Mr Hadley is therefore liable to disciplinary action liable under RICS Bye-law 5.2.2(a).

31. The Respondent admits making the posts and that they were racist/offensive. He asserted, however, that he had no memory of making them. Taking into account the legal advice received regarding health as a defence, the Panel noted that Dr Conlon's report refers to the possibility, from the perspective of a GP rather than a psychiatrist, that the Respondent could not recall the posts. However, there is no suggestion made by him, nor other evidence in support of the contention that any condition suffered by the Respondent at that time was causatively linked to his conduct.

32. It follows that the Panel concluded the Respondent was responsible for the postings and that his conduct represented a lack of integrity and conduct not befitting membership of RICS.

2. On 24 April and 2 May 2017, Mr Hadley advertised his valuation services to the public when he knew or ought to have known that he was not entitled to do so thereby acting with a lack of integrity contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2(c).

33. The Panel considered Mr Hadley was clearly notified by RICS on 7 February 2017 that his Valuer Registration had been revoked due to non-payment of fees. It noted that he responded the following day with a request to set up a payment plan and advice "for the registration set up". A further email from RICS on 18 April 2017 reminded him that he was no longer a Registered Valuer and that "...you should not be advertising your services as a valuer anywhere, which includes any social media sites." The Panel has received uncontested evidence that the Respondent promptly posted a message on Facebook on 24 April 2017 and again on 2 May 2017 advertising his services as a Registered Valuer. He followed this up on 8 May 2017 with a further request to RICS to "reinstate me and setup a payment plan".

34. The Panel concluded that this exchange of correspondence reflected a clear understanding on the part of the Respondent that he was not entitled to advertise his services as a Registered Valuer on the occasions that he did so. It was not credible, in the Panel's view, that the Respondent had not received or had forgotten about this correspondence. As such, he acted in deliberate contravention of his professional obligations and express instructions of his regulatory body.

35. This represents a clear lack of integrity.

3. On 19 May 2017, Mr Hadley acted dishonestly in making a statement to RICS that he knew or ought reasonably to have known was false and/or misleading. This is contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (a) or (c).

In the alternative,

- 4. On 19 May 2017, Mr Hadley failed to act with integrity in making a statement to RICS that he ought reasonably to have known was false and/or misleading. This is contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (a) or (c).**

36. The Panel concluded in light of the determination at charge 2 and the subsequent email on 15 May 2017 from the Respondent, that he made this statement having received, read and understood RICS' prior correspondence confirming that his VR status had been revoked. In that context, his statement that he had not "...received any letters or emails with regards to Valuer registration until the other day" was deliberately false and misleading.

37. Having so concluded, the Panel did not need to consider the alternative allegation in charge

- 5. On 26 September 2017, Mr Hadley acted dishonestly in presenting a false document to RICS purporting to show that insurance was in place for his Firm. This is contrary to Rule 3 of the Rules of Conduct for Members 2007. Mr Hadley is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (a) or (c).**

38. The Panel had regard to the evidence of Mr Sendall-King. He confirmed that the document provided by the Respondent to RICS was the same document sent to the Respondent by First Insurance by way of insurance *proposal*, with the distinction that that document had been clearly marked as such. In that respect, Mr Sendall-King was sure the document produced by the Respondent, which did not bear the words "Renewal Invitation 2017" did not come from his office.

39. The Panel took account of the context in which the Respondent provided this document to RICS, having been the subject of inquiry as to his PII status and having confirmed previously that he did not have relevant or appropriate cover. The Panel concluded that the Respondent had altered the document in a deliberate attempt to mislead RICS that he had PI insurance in place when, as confirmed by the email correspondence, he knew very well he did not.

Firm

- 6. The formal charge against Knights Surveyors & Valuers is that between 18 July 2017 and 29 September 2017 the Firm failed to have in place adequate and appropriate professional indemnity insurance cover. This is Contrary to Rule 9 of**

the Rules of Conduct for Firms 2007. Knights Surveyors & Valuers is therefore liable to disciplinary action under RICS Bye-law 5.3.2 (c).

40. The Panel found this charge proved on the basis of the Respondent's own admission and the evidence produced by RICS that cover had expired on 18 July 2017.

Liability to disciplinary action

41. The Panel received further submissions from the parties on this issue.

42. The Legal Assessor gave advice to the Panel that a decision on liability to disciplinary action was a distinct decision to a determination on the facts. It did not follow, therefore, that liability arose 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.

43. The conduct proved in this case was considered by the Panel to be very serious indeed. The posting of racist comments on a public social media forum alongside references to the Respondent's role as a surveyor was wholly inappropriate and inflicted obvious and direct damage to the reputation of the profession. His subsequent dishonest and misleading conduct in relation to his valuation and insurance status was contrary to the fundamental values of ethics to be expected of all members of the profession. The Panel were particularly concerned by the Respondent's conduct in altering an insurance document in order to mislead his regulatory body.

44. The Panel noted that whilst the Respondent has apologised and shown some understanding that the conduct, as proved, was unacceptable, he ultimately denied any responsibility for his conduct. It noted that he had attended some courses on the use of social media, and taken steps to delete his social media accounts, but in the Panel's view he failed, in spite of that, to fully grasp the impact of his actions on public safety and confidence in the profession. The Panel were concerned that in view of this lack of insight, there was a real risk the conduct could be repeated in future.

45. The Panel duly concluded that the conduct did give rise to a liability to disciplinary action.

46. As regards the Firm, the Panel were satisfied that the failure to have appropriate insurance in place as alleged also gave rise to liability to disciplinary action against it.

Decision as to sanction

47. 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.

48. The Panel paid careful heed to the advice of the legal assessor and to the indicative sanctions guidance of the RICS. It considered carefully the mitigating and aggravating factors of this case.

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

- The offensive comments on Facebook were not isolated but part of a consistent theme over a period of time;
- The Respondent failed to take corrective action promptly in relation to the posts;
- The dishonest conduct was not isolated;
- He has not accepted responsibility for the conduct;
- He had deliberately sought to mislead his regulatory body, more than once and in separate contexts;
- There was a potential risk of loss to consumers as a result of the lack of PII cover for a period of time.

50. The Panel considered that the following mitigating factors were present:

- The Respondent had suffered ill health and experienced significant adverse life events around the time of these events;
- He had attended and engaged with the disciplinary hearing;
- He has apologised;
- There is no evidence he was working at the time of these events;
- The Respondent has no other disciplinary history.

51. As regards the Firm, the Panel considered that there were no specific aggravating features beyond the fact that insurance cover was absent for some time, with the attendant risks that posed to consumers in relation to run off cover. It considered by way of mitigation the fact that the Firm had no other disciplinary history, the charge had been admitted, there was no evidence that work was conducted over the period in question and the Firm now has in place appropriate PII cover.
52. The Panel considered the matters too serious for no sanction to be imposed. The misconduct was serious, not isolated, had not been remedied and was considered at risk of being repeated. As such, a Caution or Reprimand was considered to be wholly inadequate in reflecting the gravity of the wrongdoing and in order to maintain public confidence in the profession. Undertakings have not been offered and would also be insufficient in protecting the public in a case of this nature. A fine was similarly considered to be a measure that was not best suited to the type of conduct concerned.
53. With regard to Conditions, the Panel considered they were inappropriate in principle in addressing the type of misconduct proved in this case, nor did the Panel have confidence that the Respondent would be willing or able to comply with conditions in any event. Taking into account all the circumstances of the case, the Panel concluded that the Respondent's behaviour was fundamentally incompatible with membership of the profession. It considered the only appropriate and proportionate means of protecting the public and maintaining public confidence in the profession was to expel the Respondent from RICS.
54. It followed, given that the Respondent was the sole practitioner, that for the same reasons, the appropriate sanction in respect of the Firm was to remove it from registration.
55. Accordingly the Panel orders Expulsion in relation to the Respondent and Removal in respect of the Firm.

Publication and Costs

56. 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.

57. The Panel took account of the Respondent's submissions in respect of the impact of publication on his personal reputation and health, but 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.
58. The Panel orders that this decision be published on the RICS website and in modus.
59. Both parties addressed the Panel regarding costs. The RICS presenting solicitor asked for costs and had provided a schedule to the Respondent/Firm in advance of the hearing.
60. The Panel considered carefully the costs sought and the submissions made thereto. It concluded that it was fair to make a costs order as sought, in the sum of £19,207.50. The Panel orders that the Respondent and Firm, jointly and severally, pay to RICS costs of £19,207.50.

Appeal Period

61. The Respondent and/or Firm may appeal against this decision within 28 days of notification of this decision, in accordance with Rules 59- 70.
62. 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.