

Appeal Panel Hearing

Case of

**Mr Matthew Hadley [1255609]
Knights Surveyors and Valuers
Stratford-Upon-Avon, Warks, CV37**

On

Thursday 7 March 2019

At

55 Colmore Row, Birmingham

Panel

Sir Michael Burton (Lay Chair)
Nick Turner (FRICS)
Ian Hastie (MRICS)

Legal Assessor

Chris Hamlet

RICS Representative

Kelly Sherlock

Background

1. Between 6-9 November 2018, a Disciplinary Panel of RICS found the following charges proved against Mr Hadley:

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).
 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).
2. In addition, the Panel found the following charge proved against the 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).**
3. The Panel determined that Mr Hadley and the Firm were liable for Disciplinary action and that the appropriate sanction, respectively, was Expulsion and Removal.

Appeal

4. Mr Hadley submitted an application to appeal this decision on 8 December 2018, entitled "Decision on application for reconsideration". The document essentially rehearsed the submissions he made to the Disciplinary Panel on 6-9 November 2018 in respect of charges 1 and 6 but did not address charges 2, 3 or 5.
5. The Application concluded with a request to allow Mr Hadley "...back on the RICS register and find him not guilty on all charges. He has apologised and wants another...chance. He will work along side or being monitored by the RICS if this helps." The Panel interpreted this as an appeal against the sanction imposed.

6. In support of the application, Mr Hadley included a copy of the Disciplinary Panel decision of November 2018, and attachments entitled “evidence of friends”, comprising screen shots of photographs taken from social media.

Application to admit additional evidence

7. The Panel noted that in support of his application, Mr Hadley had sought to introduce material which was not before the original Disciplinary Panel of November 2018. This included attachments to the application itself dated 8 December 2018, a copy of a letter from his General Practitioner, Dr Conlon, dated 28 January 2019 and further material under cover of an email of 4 March 2019, including a “friends list” and photographs of his hobbies.
8. The Panel was referred by the Legal Assessor to Rule 64 of the Disciplinary, Registration and Appeal Panel Rules (“the Rules”), which provides:

“An Appeal Panel shall review the decision of the Disciplinary Panel or Registration Panel having regard to:

 - a. *The evidence presented to the Disciplinary Panel or Registration Panel...*”
9. Further, Rule 65 of the Rules provides:

“The parties may not provide new evidence to the Appeal Panel without the leave of the Panel. An application to adduce new evidence must be submitted by the party applying for an appeal with his application for appeal, and by the responding party no later than 14 days before the hearing.”
10. The Panel was duly advised that, ordinarily, no fresh evidence should be received and considered on an appeal. It has a discretion to receive new evidence only insofar as it considers it necessary and appropriate to do so. It was invited to take account of Ms Sherlock’s submissions with regard to this and her references to *SRA v SDT and Arslan and the Law Society (Intervening Party) [2016] EWHC 2862 (Admin)* and the 1952 Court of Appeal case of *Ladd v Marshall*. The Panel was reminded that their function as a panel of appeal was to review the original decision, not to re-hear the matter. It followed that there should be compelling reasons to consider fresh evidence that was not before the Disciplinary Panel in November 2018.
11. The Panel noted that Ms Sherlock, on behalf of RICS, did not resist the late admission of Dr Conlon’s letter, though that was not determinative as to whether it should receive it. They were also mindful of the fact that Mr Hadley had made submissions regarding his health and its impact on the charges to the Disciplinary Panel in November and it was not clear that this material advanced his defence in that respect.
12. Mindful of the Rules, the Panel concluded that it was not appropriate to receive this additional evidence, which it had read without prejudice, but which in any event, was unlikely to make a material difference to the outcome.

Respondent’s response

13. Ms Sherlock, on behalf of RICS, provided written submissions in response dated 21 February 2019. The submissions were supported by three additional bundles of material comprising a) the Appellant's application and supporting material; b) the transcript of the Disciplinary Panel hearing of November 2018; and c) the bundle of material before the Disciplinary Panel of November 2018.
14. Ms Sherlock resisted the application.

Grounds for Appeal

15. The Panel were referred by the Legal Assessor to Rule 58 of the Rules, which provides:
"A Relevant Person may appeal to the Appeal Panel against:
 - a. *A decision of the Registration Panel made in respect of an application under Rule 47;*
 - b. *A finding of or penalty imposed by a Disciplinary Panel."*
16. The Panel was further reminded of Rule 64 as regards its function to review, not re-hear, the matter.
17. In addition, it was advised that in accordance with Rule 68, the Panel may only allow the appeal if it considers that the decision by the Disciplinary Panel was wrong.
18. Finally, the Panel were advised that in accordance with Rule 66, the burden of satisfying it that the decision(s) were wrong rests with the Appellant.

Decision

19. The Panel took careful account of Mr Hadley's written and oral submissions. Whilst it acknowledged the content of those submissions, it considered that they essentially repeated the position he expressed to the Disciplinary Panel in November 2018. The submissions did not, in the Panel's view, appear to challenge the legality of the findings or of the penalty imposed by that Panel, other than to maintain his denial of any wrongdoing.
20. Upon an independent review of the findings imposed by the Panel in November 2018, the Appeal Panel considered there was no proper basis to conclude that they were wrong. Centrally, it was noted that the Disciplinary Panel had taken full account of the references made by Mr Hadley to adverse health over the relevant period, which was again the main thrust of his submissions in this appeal, but was not satisfied that the evidence produced then, or at this appeal, pointed to a causative link between the ill health and his conduct. It was notable that Mr Hadley had not produced any substantive new medical evidence to support his assertion that health was the underlying cause of this conduct.
21. Similarly, the Appeal Panel considered that in light of the findings made, which included dishonesty and fraud, there was no basis to conclude that the Disciplinary Panel's decision regarding the sanction of expulsion was unreasonable or wrong. In particular, it appeared to the Panel that expulsion would have been appropriate in respect of charge 5 alone. The

Appeal Panel accordingly could find no reason to disagree with the Disciplinary Panel's conclusion at paragraph 53 that "...the Respondent's behaviour was fundamentally incompatible with membership of the profession."

22. Accordingly, the application is dismissed.

Submissions on Costs

23. Ms Sherlock submitted a written application for costs, in accordance with Rule 62 of the Disciplinary Registration and Appeal Panel Rules (DRAP), in the sum of £4,485, expressed to have been calculated in accordance with para 3 of Supplement 2 to the Sanctions Policy. This comprised hearing costs of £1,325 and the balance being solicitor costs in considering the papers and preparing for the hearing "*as per supplement 2 to the Sanctions Policy*".

24. Mr Hadley resisted the application on the basis that he did not have the means to pay. It was highlighted that he had yet to pay the costs of the original hearing in November.

Decision on costs

25. The Panel determined that the costs sought by RICS were reasonably incurred and should be awarded in full. It duly ordered Mr Hadley to pay RICS the sum of £4,485.

Publication

26. The Panel considered the guidance as to publication of its decisions. It noted that it is usual for the decisions of the Panel to be published on RICS' website and in RICS Modus. The Panel saw 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.

27. The Panel orders that this decision be published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008 version 6.