

ROYAL INSTITUTION OF CHARTERED SURVEYORS

DISCIPLINARY PANEL HEARING

Case of

Mr Nigel Bone FRICS [0046480]
London, W1U

55 Colmore Row, Birmingham

On

Tuesday 30 and 31 July 2019

Panel

Sally Ruthen (Lay Chairman)
Ferdinand Balfourt (Lay Member)
Nick Turner (Member)

Legal Assessor

Christopher Hamlet

Presenting Officer

James Lynch

Hearing Officer

Jae Berry

CHARGES HEARD

The Panel considered the following charges:

The formal charge against Mr Bone is:

1. You failed to act with integrity and/or act in a manner consistent with your professional obligations in that you failed to comply with conditions imposed on you by a RICS Disciplinary Panel on 12 September 2017.

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

You are therefore liable to disciplinary action under RICS Bye-law 5.2.2.

PRELIMINARY MATTERS

2. A joint application was made by the Relevant Person and RICS that additional evidence be received. This comprised, on behalf of the Relevant Person, a mail merge letter containing an undated and unsigned letter which the Relevant Person stated he believed had been sent out to clients concerning the conditions imposed on him by the 2017 Panel, together with a list of clients he says he had at the time. On behalf of RICS, the material comprised email responses to the Relevant Person's material, a copy of the Agreed Statement of Facts submitted to the 2017 Panel, and a further list of clients that RICS assert the Relevant Person had at the relevant time.
3. The Panel were directed by the Legal Assessor to Rules 23A and 41 of the Rules. They were advised that whilst the Rules ordinarily require evidence to be served within specified deadlines, Rule 41 provides the Panel with a wide discretion to receive any evidence if they consider it fair to do so.
4. The Panel considered the material to be relevant to the matters in issue and, in light of the fact that the application was made jointly, was satisfied that it would be fair to receive it.

EVIDENCE

5. In addition to the material admitted under Rule 41, the Panel took account of a bundle produced on behalf of RICS and a defence bundle produced on behalf of the Registrant.

DETERMINATION

Findings of Fact

6. Mr Lynch, on behalf of RICS, submitted that the Relevant Person had been given personal responsibility to ensure compliance with the conditions imposed by the 2017 Panel and had failed to do so. He suggested that the Relevant Person's failure to comply with the conditions reflected a complete disregard for his professional obligations which amounted to a lack of integrity.
7. The Panel noted the Relevant Person's submissions that whilst he had 'technically' breached the conditions imposed upon him by the 2017 Panel, this had not been a product of unprofessionalism or a lack of integrity, but an inability to obtain written confirmation from clients from whom instructions were routinely received verbally.
8. The Panel took account of advice from the Legal Assessor that the charge was a 'mixed' charge of alleged facts and alleged assertions. Whilst the factual assertion of a breach of conditions was admitted, it would need to apply its judgment in determining the consequential assertions of lack of professionalism and/or lack of integrity that were included within the charge. It was referred to the case of *Wingate & Evans v SRA [2018] EWCA Civ 366*, para 100 (Lord Justice Jackson):

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.

9. In addition, the Legal Assessor referred the Panel to the RICS guidance on Global Professional and Ethical Standards under the heading “Act with integrity” for examples on the kind of questions that ought to be considered in assessing whether conduct amounted to a lack of integrity. This included:

“what would an independent person think of my actions?”

How would my actions look to RICS?

How would my actions look to my peers?

Is this in the interests of my client, or my interest, or the interest of someone else?

Do I promote professional and ethical standards in all that I do?

Do I say “show me where it says I can’t” or do I say “is this ethical?”

10. The Panel observed that the Relevant Person had not sought to suggest that the breach resulted from any confusion on his part as to the nature of the conditions, or his responsibilities thereto. On the contrary, he gave evidence that he was quite clear what his obligations were. Further, he referred to himself as a ‘meticulous notekeeper’.
11. In that context, the Panel found it extraordinary that, on his own account, he had entrusted the drafting of a letter, which he suggested ‘must have been’ sent to clients in compliance with the conditions, to a temporary member of staff, that he did not check its content, nor did he retain any record of whether the letters were actually sent out or to whom they were sent.
12. The Panel observed that even if the letter had been sent out to all affected clients, its content did not meet the requirements of the conditions imposed by the 2017 Panel.

13. Similarly, the Panel was unimpressed with the Relevant Person's assertion that he had verbally notified his clients of the conditions, had been told in response that they were content that he keep the commission, and yet was able to produce no evidence to confirm that. The Relevant Person must have known that these exchanges were vitally important in the context of these proceedings, yet the only correspondence from clients he produced in support of this contention failed to clearly demonstrate that he had attempted to return the commission or that the clients were aware of the 2017 Panel determination, both being express features of the conditions imposed upon him.
14. The Panel was additionally concerned with the Relevant Person's assertion in evidence that requiring his clients to commit these exchanges to writing might adversely impact on his professional relationship with them. This appeared to suggest that the Relevant Person was more concerned with the preservation of his commercial interests than compliance with the conditions set by the 2017 Disciplinary Panel.
15. The Panel duly found the charge proved and concluded that the Relevant Person's failure to comply with the express provisions of the conditions was deliberate and therefore the product of a lack of integrity.

Liability to Disciplinary Action

16. Mr Lynch, on behalf RICS, submitted that the Relevant Person conduct renders him liable to disciplinary action. The Relevant Person made no submissions in response.
17. The Panel took account of advice from the Legal Assessor that the decision regarding liability to disciplinary action is entirely separate to its decision on the facts.
18. The Panel was referred to Bye Law 5.2.2 in which it is set out that a member 'may' be liable to disciplinary action by reason of:
 - a) Conduct liable to bring RICS into disrepute;
 - b) Serious professional incompetence;

- c) A failure to adhere to these Bye-Laws/Regulations/Rules;
- d) Having been convicted of an offence that could result in a custodial sentence.

19. The Panel noted that a) and c) applied in this case.

20. The Panel was reminded by the Legal Assessor that they had already determined that the Relevant Person's conduct was deliberate and the product of a lack of integrity. Further, the 2017 Panel had made it clear that any failure to comply with the conditions would result in disciplinary action. It followed that whilst these factors should not fetter the Panel's discretion, they should be borne in mind when considering a decision at this stage.

21. In light of the Panel's determination on the facts and conclusion that it was a) a deliberate failure to comply and b) the product of a lack of integrity, the Panel considered the Relevant Person's conduct represented a significant departure from the standards of conduct expected of members. As such, it concluded that his conduct did render him liable to disciplinary action.

Decision as to sanction

22. Mr Lynch, on behalf of RICS, submitted that the Relevant Person's conduct sat at the most serious end of the spectrum such that expulsion was the appropriate sanction. He submitted that the Relevant Person had not demonstrated insight, and that his previous disciplinary history, being a May 2010 decision concerning his firm, but which directed criticism at his personal conduct, reflected a propensity to act in contravention of his professional responsibilities.

23. The Relevant Person submitted that expulsion would be disproportionate in the circumstances. He expressed a strong desire to retain membership after 46 years in practice. He maintained, despite the Panel's decision on the facts, that the breach had not been deliberate. He submitted that he had not benefitted from his actions since his clients had agreed he could retain the commission. Further, he suggested that whilst the

matter had gone on for some time, it was an isolated act. He submitted there was no risk of future non-compliance.

24. Finally, the Relevant Person highlighted that he had admitted the breach and expressed his sincere regrets. He accepted he could have made greater efforts to comply with the Conditions and should have maintained better records, but had allowed day to day matters to take priority. He highlighted that he had assisted RICS and cooperated with the proceedings.

25. The Panel bore in mind further advice from the Legal Assessor that the purpose of sanctions is not to be punitive, though that may be their effect. It was referred to published guidance on sanctions and reminded of the Overriding Principles that include the need 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.

26. The Panel considered the following to be mitigating features of the case:

- His admission to the breach
- His apology
- His engagement with the proceedings and cooperation with RICS

27. The Panel considered the following to be aggravating features of the case:

- The breach was deliberate
- The breach was sustained, despite repeated reminders by RICS
- It has resulted in a loss to clients who were not reimbursed commission in accordance with the direction of the 2017 Panel
- The previous history suggests a propensity to professional misconduct
- An ongoing lack of insight/risk of repetition

28. The Panel was mindful of the need to consider sanction in ascending order of seriousness. It considered the matters too serious for no sanction to be imposed. It

further considered that a Caution or Reprimand would be inadequate in reflecting deliberate misconduct of this nature.

29. The Panel considered that a Fine, in isolation at least, would also fail to reflect the gravity of the wrongdoing, nor would it address the damage to public confidence in the profession that arises in respect of a sustained breach of conditions.

30. The Panel went on to consider whether a further period of conditions would be appropriate. It was conscious that Conditions should only be imposed if they are specific, measurable, achievable, realistic and time bound. It was concerned that in light of the Relevant Person's history before disciplinary tribunals, including his breach of the conditions set in 2017, the prospects for his compliance with a further set of conditions was poor. Further, the fact that the Relevant Person, on his own account, was fully aware of his obligations under the conditions set in 2017 and yet deliberately breached them over a sustained period, despite repeated reminders and an extension of time for compliance, placed his conduct into the most serious category of professional misconduct.

31. The Panel concluded that there were significant aggravating features in this case and, in order to maintain public confidence and to uphold proper standards of conduct across the profession, it was necessary and proportionate in this case to impose the ultimate sanction.

32. Accordingly the Panel ordered that the Relevant Person be expelled.

Costs

33. In accordance with Rule 34 of the Disciplinary, Regulatory and Appeal Panel Rules 2017, Version 7, the Panel awarded RICS £7,725 by way of costs for this Disciplinary Panel hearing.

Publication

34. The Panel saw no reason to depart from the presumption of publication in this case and directed publication in accordance with Supplement 3 to the Sanctions policy.

Appeal Period

35. Mr Bone has 28 days, from the service of the notification of the decision, to appeal this decision in accordance with Rule 58 of the Disciplinary, Registration and Appeal Panel Rules.

36. In accordance with Rule 59 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.