

Appeal Panel Hearing

Case of

**Mr Martin Nicholson [1124057]
Sheffield, S10**

On

Wednesday 26 February 2020

At

RICS, 55 Colmore Row, Birmingham, B3 2AS

Panel

Sir Michael Burton GBE (Lay Chairman)
Ron Barclay-Smith (Lay Member)
Nick Gray (Surveyor Member)

Legal Assessor

Ben Kemp

RICS Representative

Kelly Sherlock

Hearings Officer

Emma Jones

Appeal Hearing

The Appeal Panel heard an appeal by Mr Nicholson (“the Appellant”) against a decision of an RICS Disciplinary Panel following a hearing which took place on 07- 09 October 2019.

Decision of the Disciplinary Panel 09 October 2019

1. The Disciplinary Panel found the following charges against the Appellant proven:

1. *Between 7 July 2015 and 28 August 2015, he instructed Mr P to make transfers as to the distribution of funds in respect of a compulsory purchase order. In doing so, he forwarded emails purporting to confirm written instructions [given by] Mr H, dated 2 July 2015 and 24 August 2015, which were not accurate and/or true copies of the originals. His conduct constituted:*
 - i. *a lack of integrity in that he ought reasonably to have known that the emails forwarded by him were not accurate and/or true copies of the originals that he received;*
 - ii. *dishonesty in that he knew that the emails forwarded by him were not accurate and/or true copies of the emails that he had received.*

2. *Between 7 July 2015 and 28 August 2015, he concealed the true identity of the payee details referred to as “M Nicholls” in relation to the distribution of the compulsory purchase order funds and thereby facilitated the transfer of funds totalling £20,140 to his own bank account. His conduct above constituted:*
 - i. *a lack of integrity in that he demonstrated a deliberate or reckless disregard for his professional obligations;*
 - ii. *dishonesty in that he sought to transfer the funds for his own benefit.*

3. *In or around November 2015, he procured the signature of [Mr Sb] for the purpose of opening a bank account in the name of BV without his knowledge or consent. His conduct above constituted:*
 - i. *a lack of integrity in that he ought reasonably to have known that [Mr Sb] did not know or consent to the use of his signature for this purpose;*
 - ii. *dishonesty in that he knew that [Mr Sb] did not know or consent to the use of his signature for this purpose.*

4. *Between March and June 2016 he requested and received payment, in connection with a valuation undertaken on a church property, into a bank account that was not associated with BV citing the reference “B/V Nicholson”. His actions above constituted:*

- i. a lack of integrity as he was reckless as to whether his request for and receipt of payment into an account, citing reference “B/V Nicholson”, was misleading;*
 - ii. dishonesty as he knew that his request for and receipt of payment into account, citing reference B/V Nicholson was misleading.*

- 5. Following the suspension of his RICS membership on 27 April 2018 he acted with a lack of integrity in failing to notify the “R” bank and/or his professional insurance provider of his membership suspension.*

- 6. Between 28 April 2018 and 16 July 2018, he prepared valuation reports for the “R” bank, as detailed in [Schedule 1], when he was not entitled to do so having been suspended from membership of RICS on 27 April 2018. His actions above constituted:*
 - i. a lack of integrity as he ought reasonably to have known that his RICS membership had been suspended by the Disciplinary Panel on 27 April 2018;*
 - ii. dishonesty as he knew that his RICS membership had been suspended by the Disciplinary Panel on 27 April 2018.*

- 7. In respect of the “A Road” valuation report, he amended the valuation report to reflect a £12,000 increase in the valuation figure calculated by another valuer. His actions constituted:*
 - i. a lack of integrity as he ought reasonably to have known that the amended figure did not reflect the true valuation that had been calculated by the reviewing valuer;*
 - ii. dishonesty as he knew that the amended figure did not reflect the true valuation that had been calculated by the reviewing valuer.*

- 8. He utilised the name and/or signature of [Mr St] on any or all of the valuation reports detailed in [Schedule 2] without [Mr St’s] knowledge or consent. His actions above constituted:*
 - i. a lack of integrity in that he ought reasonably to have known that [Mr St] had no knowledge of and had not consented to the use of his signature in this way;*

- ii. dishonesty in that he ought reasonably to have known that [Mr St] had no knowledge of and had not consented to the use of his signature in this way.*

- 9. He utilised the name and/or signature of Mr E on any or all of the valuation reports detailed in [schedule 3] without Mr E's knowledge or consent. His actions above constituted:*
 - i. a lack of integrity in that he ought reasonably to have known that Mr E had no knowledge of and had not consented to the use of his signature in this way;*
 - ii. dishonesty in that he ought reasonably to have known that Mr E had no knowledge of and had not consented to the use of his signature in this way.*

- 10. On 31 December 2018 he forwarded emails dated: 8 May 2018; 23 May 2018; 24 May 2018; 29 May 2018; 19 June 2018; and/or 16 July 2018 in response to an RICS investigation which were not accurate and/or true copies of the originals. His actions above constituted:*
 - i. a lack of integrity in that he ought reasonably to have known that the emails forwarded were not true and/or accurate copies of the originals;*
 - ii. dishonesty in that he knew that the emails forwarded were not true and accurate copies of the originals.*

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

- 3. The Appellant did not attend, and was not represented at, the hearing before the Disciplinary Panel, which proceeded to hear and determine the case in his absence. Prior to the hearing, the Appellant had applied for an adjournment, which was refused. The Disciplinary Panel found all of the above Allegations proven, with the exception of Allegation 5, which it found proven in part. It did not find proven to the required standard that the Appellant had failed to notify his professional insurance provider of his RICS membership suspension.

- 4. The Disciplinary Panel found the Appellant liable to disciplinary action. The Panel expelled the Appellant from membership of RICS. He was ordered to pay RICS costs in the sum of £32,917.50 and the decision of the Disciplinary Panel was to be published.

Background

5. The Appellant has been a member of RICS since 01 January 1999. He was previously a director and shareholder of Brownhill Vickers Limited and a partner of Brownhill Vickers Professional Property Services, both RICS-regulated entities and, in practice, operated as a single entity (collectively referred to as 'BV'). The Appellant was the Managing Partner and most senior person at BV. The Appellant was removed (by shareholder resolution) as a Director of BV in July 2016. He subsequently ceased to be a partner and shareholder in BV. He then practised as the sole principal of Nicholson & Co Chartered Surveyors, a firm which had been regulated by RICS since September 2016.
6. This case arose from a complaint received by RICS from BV, reporting suspected fraudulent activity on the part of the Appellant. The original complaint related to the circumstances pertaining to Allegations 1 and 2. The Appellant had been acting for the seller (a Pension Fund) in relation to the compulsory purchase by a local authority of a licensed public house in Sheffield. The Allegations, as found proven by the Disciplinary Panel, related to the dishonest distribution of the sale proceeds, including in particular the improper transfer of the sum of £20,140 to an account in the Appellant's own name. Allegation 2 related to the deception of his partners and colleagues in attempting to conceal the fact that the recipient bank account in fact belonged to the Appellant. The method of deception, as alleged and found proven, was the doctoring by the Appellant of email correspondence from the client, Mr H, such that it appeared to instruct the transfer of funds to the account of 'M Nicholls'. When challenged by his partners, the Appellant originally offered the explanation that this was the name of a third-party business partner of the client. It transpired that the bank account in question was in fact that of the Appellant.
7. The other Allegations arose from matters subsequently uncovered, each of which to different extents bringing into question the Appellant's honesty and/or integrity. He was found to have procured by deception of a colleague the opening of a new bank account in the name of BV (Allegation 3), and to have improperly arranged the payment of a client fee into his own personal bank account, rather than the appropriate BV business account (Allegation 4). Following his interim suspension by RICS on 27 April 2018, the Appellant was found to have failed to notify a bank for which he was undertaking valuation work of his suspension, contrary to the requirements of both RICS and the client bank (Allegation 5). Allegation 6 reflects the

fact, as found proven by the Disciplinary Panel, that the Appellant produced valuation reports for this bank client, when, in light of his suspension, he was not entitled to do so.

8. Allegations 7-9 all relate to the Appellant's conduct in undertaking various valuation work for the same bank. He sought the assistance of another valuer, Mr St, to undertake a valuation of property at 'A Road'. Before submitting the report to the client, it is alleged, and was found proven by the Disciplinary panel, that the Appellant altered the valuation figure. Mr St had valued the property at £165,000 and this figure was amended by the Appellant to the increased figure of £177,000, prior to the submission of the report and without the knowledge or consent of Mr St. The amended report was nonetheless issued by the Appellant to the client in the name of, and signed by, Mr St.
9. It was further alleged, and found proven, that the Appellant used Mr St's name and/or signature on four other specified valuation reports, without the knowledge or consent of Mr St (Allegation 8). Similarly, the Disciplinary Panel found that the Appellant had used the name and/or signature of another surveyor, Mr E, for the purposes of three other specified valuation reports, again without Mr E's knowledge or consent (Allegation 9).
10. Finally, it was alleged, and found proven by the Disciplinary Panel, that the Appellant had, in response to RICS requests for information, produced doctored and inaccurate copies of a number of emails (Allegation 10), apparently thereby seeking to improve his position before his professional body.
11. In arriving at its determination the Disciplinary Panel had the benefit of hearing live witness evidence from three BV colleagues of the Appellant, Mr C, Mr P and Mr Sb, whose signed statements supported the original BV complaint and Allegations 1, 2 and 3. In particular, Mr P, Lettings Manager for BV, spoke to his concerns about the fund transfers he was instructed by the Appellant to arrange. He was uncomfortable about the request to transfer client funds to the 'M. Nicholls' account, because these monies were not being transferred to the client, and because of the similarity with the name of the Appellant.
12. The Disciplinary Panel also had the benefit of a signed statement from the client, Reverend A, relevant to Allegation 4, and a signed statement and live evidence from Mr P, Director at the client bank pertinent to Allegations 5, 6, 7 and 8. The Panel additionally had the benefit of

signed statements, and live witness evidence, from the two other surveyors, Mr St and Mr E, who spoke in support of Allegations 7 and 8, and 9, respectively.

13. This Appeal Panel has in turn had before it;-
 - a. The complete documentary bundle as produced before the Disciplinary Panel, including all of the witness statements referred to.
 - b. The complete transcript of the hearing, over three days, before the Disciplinary Panel.
 - c. Grounds of appeal, RICS response and written submissions produced by both parties.
 - d. Additional evidence in the form of various correspondence and statements produced by the Appellant, some of which were produced very late, in the days immediately prior to the appeal hearing.
 - e. Evidence and submissions relevant to the decision of the Disciplinary Panel to proceed in the absence of the Appellant.
 - f. Additional correspondence, including a letter from the Appellant's general practitioner, received and considered by the Disciplinary Panel on the third and final day of its hearing.

Appellant's Grounds of Appeal

14. The Appellant's Grounds of Appeal, insofar as discernible from his written Grounds of Appeal, written submissions and oral submissions at the Appeal hearing, may be summarised as follows;-
 - a. He was not accorded a fair hearing by the Disciplinary Panel, which ought not to have proceeded in his absence, recognising that he was unable by reason of ill health to attend.
 - b. He was not accorded a fair hearing because RICS had failed properly to investigate the Appellant's case, and in particular to produce statements from additional witnesses he had suggested to them.

- c. He was not accorded a fair hearing because, having left BV, he was not in a position to verify the origin or authenticity of much of the documentary evidence produced.
- d. The Appellant had been the victim of a conspiracy by his former colleagues, who had themselves been responsible for editing/ doctoring relevant correspondence and meeting notes.
- e. More specifically, the Disciplinary Panel misdirected itself because, the Appellant asserts;-
 - i. There was and never has been a relevant bank account in the name of 'M Nicholls' (Allegations 1 and 2)
 - ii. He did not doctor/ edit any emails (Allegations 1, 2 and 10)
 - iii. He was instructed in a personal capacity in relation to the compulsory purchase order matter (Allegations 1 and 2)
 - iv. His client in relation to the compulsory purchase order matter (Allegations 1 and 2), Mr H, was entirely happy with what the Appellant had done on his behalf.
 - v. He did not deceive Mr Sb (Allegation 3)- rather, the Appellant asserts, Mr Sb was not thinking clearly, either at the time or perhaps subsequently, and as a result misrepresented the position.
 - vi. His BV colleagues were aware of his intention to open a bank account (Allegation 3).
 - vii. He gave his personal account details, rather than those of the BV corporate bank account to client, Reverend A, because it was a Sunday and he does not carry corporate bank details on a Sunday (Allegation 4).
 - viii. He did notify client bank R of his RICS suspension (Allegation 5) and/ or it was acceptable for him to continue to act because he was using other registered valuers and/or the contract was with his company, not the Appellant as an individual (Allegation 6).
 - ix. The Appellant did not amend the 'A road' valuation report- this might have been done by his secretary. In any event, the amendment to the value figure was not material.

x. Mr St had in fact participated in the valuations of the properties for which reports had been produced in his name, and Mr E may have done.

15. The Appellant thus challenges the findings of the Disciplinary Panel in relation to each of the ten Allegations. He invites the Appeal Panel either (1) to set aside the decision of the Disciplinary Panel and dismiss the case, or (2) to quash its decision and to appoint the case to be reheard afresh by a new Panel.
16. A fundamental difficulty for the Appellant, however, in relation to this appeal, is the almost complete dearth of any sufficiently specific and relevant evidence to support his assertions. There was amongst the additional material produced very late for this hearing some evidence that might suggest that the valuer, Mr St was in fact involved in other valuation work with the Appellant, beyond the work referred to by Mr St in his statement, including the report on 'A road' which is the subject of Allegation 7. This however is as close as the Appellant comes to being able to support his position and, even then, crucially, this new evidence is not so specific as to clarify with which properties/ reports Mr St is said to have been involved. It is not therefore such as to challenge directly RICS' position, supported in evidence by Mr St, that he was not involved with the four properties specifically referred to in relation to Allegation 8.

RICS' Response to the Appeal

17. Ms Sherlock's very clear submissions on behalf of RICS may be summarised briefly. There had, she said, been no unfairness to the Appellant. The medical evidence he had produced, late, to the Disciplinary Panel, did not come close to that necessary to support an adjournment. The Disciplinary Panel was quite entitled and right to proceed in his absence. Moreover, the lower Disciplinary Panel had had the benefit of substantial live witness evidence, which it had judged credible and compelling. The Appeal Panel should be slow to disturb its findings. Moreover, those findings were clearly and sufficiently supported by the substantial cogent evidence produced by RICS. The material now produced by the Appellant, some of which had been available to the lower Tribunal Panel in any event, was neither sufficiently relevant nor sufficiently specific to bring those findings into question. It had been open to the Appellant to attend the evidential hearing before the Disciplinary Panel, to present his case fully, to lead evidence, and to cross examine the RICS witnesses. He had elected not

to do so and it would be inappropriate now to allow him a ‘second bite of the cherry’ by way of appeal. Insofar as some of the Appellant’s new material had been produced very late, shortly prior to this appeal hearing, RICS objected to its late admission.

Determination

18. The Appeal Panel has experienced some difficulty in discerning the cogent basis for this appeal. It has considered carefully all of the documentary evidence which was before the Disciplinary Panel, the reasoned decision of that Panel, the full transcript of its proceedings, and the written and oral submissions of both parties. The Panel reminds itself that its role is one of review of the decision of the Disciplinary Panel. This is not a re-hearing. Only where the Appeal Panel considers that the decision of the Disciplinary Panel was wrong may the Appeal Panel allow the appeal. Moreover, in accordance with Rule 66 of the applicable RICS Disciplinary, Registration and Appeal Panel Rules, the burden is on the Appellant to satisfy the Appeal Panel that the order being appealed was wrong.
19. The Appeal Panel considered first whether the Appellant has any real basis for arguing that the original Disciplinary Panel hearing ought to have been adjourned, on grounds of the Appellant’s ill health. The medical evidence produced by the Appellant came very late, on the third and final day of the original hearing, but, more importantly, was of very limited substance. It comprised a short letter dated 09 October 2019, from the Appellant’s general practitioner, confirming that the Appellant has a permanent and long-term eye condition, which, *“affects his ability to read text and screens for long periods”*. The Appeal Panel simply notes that there was no such requirement in order to participate in the original hearing. The letter further reported that the Appellant, *“has been showing symptoms of stress and anxiety for the past few months as a result of the ongoing investigation by RICS regarding his previous practice”*.
20. The fact is, and the Appeal Panel concludes, that this very limited evidence falls significantly short of suggesting that the Appellant was medically unfit to participate in the original hearing, or therefore that it would have been necessary or appropriate to adjourn those proceedings. The Appellant elected not to attend the original hearing. The Appeal Panel notes that he has been able to present his case and arguments at some length and with considerable fluency before the Appeal Panel.

21. The Appeal Panel is similarly unimpressed by the suggestion, advanced by the Appellant, that RICS was in some way responsible for presenting his defence to the allegations. The obligation on RICS, discharged in full, was to disclose timeously to the Appellant the case it intended to bring, any and all relevant evidence it had in its possession, including details of its witnesses and of their evidence in the form of disclosed witness statements: it did so two months before the hearing. It was not for RICS to embark on a trawl of other possible witnesses who might conceivably assist the Appellant. The Appellant had ample opportunity to prepare and present any defence, and to test the RICS case, at the original hearing. He chose not to do so.

22. The Appeal Panel was concerned at the attempt by the Appellant at a very late stage prior to this appeal hearing to introduce new evidence. The Appeal Panel further notes that all of this material would have been available to the Appellant, had he thought or chosen to produce it, at the original hearing. Whilst reserving its judgment as to its admissibility, the Panel has nonetheless had careful regard to all of the material produced in order to consider whether any of it might conceivably disclose a stateable basis for disturbing the determination of the lower Disciplinary Panel. The Appeal Panel has concluded that it does not.

23. The Appeal Panel concludes that most if not all of the evidence produced by the Appellant is not sufficiently relevant or specific to undermine the weight of evidence, including substantial live witness evidence, laid before the lower Disciplinary Panel. Unfortunately for the Appellant, he has little if anything to support his assertions. The balance and weight of evidence clearly supports the findings of the Disciplinary Panel. It moreover had the benefit of hearing directly from six of the seven RICS witnesses, and receiving a detailed statement from the seventh, judging them to be reliable and credible. The Appellant on the other hand was less persuasive. He appeared to alter and contradict his position in a number of respects, when questioned by the Appeal Panel. His submissions, in common with the additional evidence, were often peripheral to the actual issues charged. To the extent relevant, some of the Appellant's evidence might as noted be argued to go to the credibility of RICS witness, Mr St. But, even taken at its highest, this would not be nearly sufficient to disturb the substantive determination of the Disciplinary Panel.

24. Turning more specifically to the allegations, the Appellant has not been able to explain satisfactorily why a client email was doctored so as to procure the transfer of client funds to the account of 'M Nicholls', an account in fact belonging to the Appellant (Allegations 1 and 2). Letters of endorsement produced from the client, Mr H, as well as from his son, fail entirely to address this issue, or demonstrate any knowledge of the actual allegations brought by RICS.
25. The Appellant has further failed to explain in any convincing way, let alone substantiate, why anybody other than the Appellant would have undertaken the retrospective amendment of emails, in correspondence with colleagues (Allegations 1 and 2) and with RICS, in response to its inquiries (Allegation 10).
26. Nor can the Appellant explain satisfactorily the evidence in the RICS bundle clearly demonstrating that the Appellant accepted under questioning by his BV colleagues that he had surreptitiously deceived Mr Sb into authorising the opening of a new bank account. Notwithstanding this clear evidence, supporting the testimony of Mr Sb himself, the Appellant sought before the Appeal Panel to assert that Mr Sb had been confused; possibly, he suggested, due to intoxication at the time.
27. The Appellant's other explanations were, in the judgment of the Appeal Panel, similarly unconvincing in the face of the weight of evidence against him.
28. For completeness, the Appeal Panel notes that the Appellant has suggested in the course of his written submissions- although the point was not accorded any emphasis at the appeal hearing- that one of the panel members from the original Tribunal Panel hearing might have had a connection to BV. Insofar as this argument was touched on at all in oral submission, the Appellant acknowledged that the panel member might well not have been cognisant of the connection, which appeared to be, if anything, quite historic and tenuous.
29. Although not an argument advanced specifically by the Appellant, the Appeal Panel has considered the appropriateness of the Tribunal Panel's decision on sanction. A number of the allegations found proven were, individually, of a serious nature, bringing into question the Appellant's honesty and integrity. The Appeal Panel has no difficulty concluding that the

Disciplinary Panel's decision to expel the Appellant from RICS membership was in the circumstances reasonable and proportionate.

30. For all of these reasons, the appeal is dismissed. It is not in the circumstances necessary for the Appeal Panel to consider further the question of the formal admissibility of the Appellant's evidence.

Publication

31. The Appeal Panel takes account of the relevant RICS guidance as to publication of its decisions. It is usual, in accordance with that guidance, for decisions of the Appeal Panel to be published on RICS' website and in RICS Modus. The Appeal Panel sees no reason to depart 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.
32. The Appeal Panel orders that this decision is published on RICS' website and in RICS Modus, in accordance with Supplement 3 to the Sanctions Policy 2008, version 6.

Costs

33. RICS has asked for costs associated with this appeal in the total sum of £9,050. It has provided a costs schedule to the Appellant in advance of the hearing.
34. The Panel has considered carefully the costs sought and determines that they are reasonable and proportionate. It has also however had regard to the statement of means produced by the Appellant, and his submissions as to his current ability to pay. It notes that there is an existing, as yet unpaid, costs award against the Appellant, relating to the Disciplinary Panel hearing in this case, in the sum of £32,917.50.
35. The Panel orders the Appellant additionally to pay RICS' costs of this appeal, but in the restricted amount of **£7,082.50**. The result is that the Appellant is to pay costs totaling **£40,000**, taking account of both this Appeal and the lower Tribunal Panel proceedings.