

Disciplinary Panel Hearing

Case of

Jack Cook AssocRICS [6525751]

On

Wednesday 4 August 2020

Paper Hearing Via

video conference

Lay Chairman

Alison Sansome

Members

Justin Mason (Surveyor Member)

Gregory Hammond (Lay Member)

Legal Assessor

Margaret Obi

Proceeding as a Paper Hearing

1. Mr Cook requested a Paper Hearing following receipt of the Bundle of Evidence and the Case Summary. He subsequently completed and returned the Listing Questionnaire confirming his request for a Paper Hearing and submitted a Statement of Means. RICS did not oppose the application for a Paper Hearing.
2. The application for a Paper Hearing was considered by the Chair on 21 June 2021 in accordance with Rule 67(c) of the Disciplinary, Registration and Appeal Panel Rules (Version 8). The Chair determined that the hearing should proceed as a Paper Hearing as Mr Cook had confirmed that he admitted the charges in their entirety and was keen to save unnecessary costs.
3. The Panel noted that Mr Cook had been served with the Notice of Hearing on 5 July 2021. The Notice of Hearing was sent by post and by email. The Tribunal Regulatory Executive confirmed in a statement, dated 3 August 2021, that Mr Cook's postal and email address are his 'preferred addresses' on the contact record held by RICS on its systems. The Notice of Hearing confirmed the date and time of the Paper Hearing and invited Mr Cook to notify RICS within seven days if he wanted to request an oral hearing. There was no information before the Panel that a request for an oral hearing had been made.
4. The Panel was satisfied that Mr Cook had been given a minimum of 28 days' notice and a copy of the documents upon which RICS intended to rely at least 14 days before the date of the hearing. In these circumstances, the Panel was satisfied that the Notice of Hearing had been properly served in accordance with Rule 43a and that it was fair and appropriate to proceed with the Paper Hearing.

The Formal Charge

5. The formal charges against Jack Cook are as follows:
 1. On or about 7th February 2019 Jack Cook acted dishonestly by signing the declaration on his submission to become an Associate member of RICS confirming that it was written by him in his own words, when he had plagiarised parts of an RICS submission completed by IV.

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

2. On or about 7th February 2019 Jack Cook acted dishonestly by submitting an RICS Associate Submission Document that contained examples of Technical Competencies which did not, and which he knew did not, accurately represent his own work but were modified examples of Technical Competencies demonstrated by IV in an earlier RICS submission. The false examples were included in the “Measurement and inspection of land and property” section of his submission, namely:

a) *“I measured a large field on behalf of an existing client. I used Promap to measure the site areas requested; the full field area, the top woodland and the middle paddocks in order to satisfy my client’s requirements. I measured stable units within the area on a gross internal area basis and listed these separately on the marketing particulars for clarity.”*

And/or,

b) *“For a Market Appraisal instruction, I inspected a commercial office unit in Bartlow occupied by a grain trading business. I used my company’s pro-forma to provide relevant detail. I noted that there were stud walls in place to create a ‘service counter’ as well as a purpose-built bank vault with alarm access codes on each internal door.”*

And/or,

c) *“During our graduate training, we were tasked with inspecting a rural farmhouse near Bath, and presenting our considerations to our peers. I observed the age, condition and construction of the property, and was able to correctly identify that the building was listed due to its location and period features.”*

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

3. Jack Cook failed to act with integrity by plagiarising parts of IV’s RICS submission in his submission to become an Associate member of RICS on or about 7th February 2019.

Contrary to Rule 3 of the Rules of Conduct for Members 2007 Jack Cook is therefore liable to disciplinary action under RICS Bye-Law 5.2.2 (a) and/or (c)

Response

6. Mr Cook was given the opportunity to discuss his request for a Paper Hearing with the Presenting Officer. In a letter the RICS Regulatory Tribunal Executive, dated 2 June 2021, the Presenting Officer wrote that he had spoken with Mr Cook by telephone. The Presenting Officer stated that:

“He has confirmed that he admits all the allegations raised. He accepts the seriousness of the allegations and understands that a sanction of expulsion is likely to follow although that is entirely a matter for the Panel to decide. Mr Cook also understands that any decision and sanction will be publicised in accordance with the Regulatory Board’s publication policy. He has no submissions to make in that regard. Mr Cook’s request for a paper hearing is based on a wish to simplify proceedings and save on unnecessary costs given that he does not dispute the case against him. It is in no way intended to show a disregard for the seriousness of the matter but is intended to assist the process. Mr Cook has co-operated with the investigation and it is no fault of his that the process has taken as long as it has. That has been due primarily to the national lockdowns and the furloughing of RICS staff. Mr Cook has had this matter hanging over him for a considerable time and wants it to be dealt with as expeditiously as possible.”

7. Mr Cook subsequently submitted the Listing Questionnaire, signed and dated 1 July 2021, in which he confirmed that he admitted the charges in their entirety and accepted that he was liable to disciplinary action.

Background

8. Jack Cook is a member of RICS and at the relevant time was employed by Carter Jonas LLP at One Station Square in Cambridge. It is alleged that he plagiarised the work of a colleague when submitting an assessment document to RICS and by so doing acted both dishonestly and without the level of integrity required of a member of RICS.

Chronology of Events

9. In February 2019, Mr Cook applied to become an Associate Member of RICS via the Real Estate Agency Pathway. In order to complete his application, Mr Cook was required to submit an RICS

Associate Assessment Submission Document (also referred to as an APC submission). Mr Cook had made a previous unsuccessful application in 2018.

10. The 2019 application was submitted electronically to RICS. The submission date is recorded as being 1-8 February 2019. At the start of the document there is a declaration to be signed by the candidate. That declaration reads: "***I confirm that: I have read the applicant, or candidate guide, and declare that I have completed my submission documents in line with the requirements. I have met the competencies and levels as required. I understand what plagiarism is and am aware of the RICS policy. I declare that this project is my own work; it represents my own learning, and was written by me in my own words. I declare where other sources of information have been used, I have acknowledged and referenced this. I understand that failing to acknowledge other materials will be treated as plagiarism.***" That declaration was signed by Mr Cook and dated 7 February 2019.
11. At the conclusion of the document there is a further declaration also signed by Mr Cook and dated 7 February 2019. That declaration includes inter alia: "***I confirm the following: The work I am submitting for assessment is my own work and a true reflection of my experience, qualifications and development. I understand and accept that I am accountable for the truth of this declaration, If at any time RICS discovers that I have failed to disclose any of the above or that I have provided false information it has the right to terminate my membership with immediate effect.***"
12. Prior to completing and submitting the Assessment Document Mr Cook had asked to see a completed Assessment Document that had been previously submitted by a colleague - IV, in the course of her successful application to become a MRICS in 2018. IV provided Mr Cook with a copy of her completed Assessment Document by email on 16 January 2019. There is no complaint made by RICS about the use of past submissions by candidates to assist them in the structuring of their own submissions. It appears that that was usual practice within Carter Jonas LLP. A week later, on 23 January 2019 Mr Cook asked a colleague - JS MRICS, if he would review his proposed submission. JS was provided with a copy of the submission; he reviewed it. Due to some of the terminology used within the draft submission, JS looked at the previous submission made by IV. On doing so, he noticed a number of similarities between the two documents. On 24 January 2019, JS spoke with Mr Cook about his draft submission. JS did not refer to IV's submission or mention the similarities. However, he did advise Mr Cook that he needed to reflect his own experiences within his submission. At that time Mr Cook's manager

and counsellor - MR MRICS, was on leave. On subsequent days JS asked Mr Cook if he needed any further help with his submission. Mr Cook did not require his help.

13. On 7 February 2019, MR countersigned Mr Cook's Assessment Document. The document was submitted to RICS that day. On 8 February 2019, JS spoke with MR and expressed his concerns about the similarity between the two documents. MR carried out his own comparison of the two documents. He marked up the similarities that were apparent to him and showed them to Mr Cook. MR advised Mr Cook that he had placed himself at risk and that he, Mr Cook, needed to decide how to deal with it. On at least two occasions Mr Cook telephoned the RICS telephone number; once on Monday 18 February 2019 and again on Thursday 28 February 2019. Mr Cook has submitted his mobile telephone records substantiating the making of those two calls. It is understood that Mr Cook asserts that he raised his concerns with RICS staff in relation to his submission. There is no evidence to confirm or refute that assertion save that telephone records do show the existence of those 2 calls to RICS. During the course of those calls Mr Cook did learn that RICS had a software system in place to check submissions for evidence of plagiarism. RICS use a system called Turnitin which has the capability of comparing any document with other documents on its database for levels of similarity. Not every submission is checked, but a random sample is checked using that software. Mr Cook's submission was not one that was checked in February 2019.
14. On 29 March 2019, Mr Cook was accepted by RICS as an Associate having successfully demonstrated his competency, knowledge and experience based upon his Assessment Document.
15. In December 2019, Mr Cook was promoted to Senior Surveyor in the Cambridge office of Carter Jonas LLP. Other surveyors who had become aware of possible anomalies in Mr Cook's Assessment Document were unhappy about his promotion. In consequence, an internal investigation was carried out in January 2020 by Mr Cook's employers. Following the internal investigation, Mr Cook wrote to RICS on 13 February 2020, to report the concerns about the similarities between his submission and that of IV. On the same date, a partner at Carter Jonas LLP – TJ FRICS, also wrote to RICS highlighting the same concerns. Both letters were received by RICS on 17 February 2020.
16. RICS commenced an investigation. Mr Cook's Assessment Document was checked using the Turnitin software and found to have a 58% similarity to papers previously submitted to RICS. RICS were already aware that the similarities would be with the submission document written by

IV. For ease of reference a Comparison Document setting out the most significant similarities was prepared by RICS with the relevant passages from both documents displayed side by side.

17. Mr Cook was contacted by the RICS Investigator on 1 April 2020 by email requesting his version of events. Mr Cook responded to that request by way of an email on 14 April 2020. In his response Mr Cook explained that he is dyslexic and has always required assistance in writing documents and accordingly much of what he writes may not be in his own words due to the assistance given by others. He stated that what he had written reflects his original thought, his work, and his skills. Mr Cook reiterated that his submission and case study were a true representation of his work. He further explained that he had had legitimate access to the document drafted by IV at the start of writing his case study but had not subsequently compared his finished submission with that of IV. He stated that all the information in his document is accurate and truthful.
18. On 8 September 2020, following the obtaining of witness statements, Mr Cook was again contacted by the RICS Investigator who provided him with copies of the statements and afforded him the opportunity to reply with any comments. On 22 September 2020, Mr Cook sent an email to the Investigator making it clear that he accepted the allegations made against him, but that his use of parts of his colleague's submission had been neither intentional or malicious and emphasised that he had represented his own work. That email was followed by a telephone call by Mr Cook that afternoon in which he stated his willingness to undergo the application process afresh.
19. On 17 November 2020, Mr Cook was sent the Head of Regulation Decision informing him that this matter should be referred to a Disciplinary Panel.
20. Further scrutiny of Mr Cook's submission was carried out by RICS. A number of areas bore striking similarity to IV's document and related to specific work claimed to have been done by Mr Cook. Some aspects related to how he allegedly advised clients, approached tasks and what he had learned from those experiences. Other aspects related to particular work that he claimed to have done. On 8 March 2021, the RICS investigator contacted Mr Cook by email attached to which was a copy of the comparison document showing the relevant parts of Mr Cook's submission side by side with IV's submission. The comparison document had been highlighted and Mr Cook was asked to consider a number of passages that had been highlighted in blue and some that had also been underlined. He was asked if he could provide any documentary evidence to support the highlighted passages. He was also provided with the opportunity to admit to any of the specific passages not being a true reflection of his work. Mr Cook responded by

email on 21 March 2021. In his response Mr Cook stated: (i) that he had put forward his resignation from RICS; (ii) he expressed his disappointment over the delay in this matter and concerns about how it has been handled; (iii) that he had at the earliest opportunity accepted the allegations made against him and accepts that he is in breach of the bylaws as set out in the RICS correspondence. Mr Cook chose not to address the particular points about the passages highlighted in blue on the comparison document. He stated that he had no further comments to make at that stage.

Findings of Fact

21. The Panel carefully considered the hearing bundle which included Mr Cook's submission, witness statements, the comparison table and the Turnitin report.
22. The Panel found the facts proved in their entirety based on Mr Cook's admissions.

Liability to Disciplinary Action

23. The Panel noted that a member "*may be liable to disciplinary action under these Bye-Laws... by reason of: ... (c) a failure to adhere to these Bye-Laws or to Regulations or Rules governing Member's conduct*". The Panel was aware that not every breach or departure from the regulations or rules will render a member liable to disciplinary action.
24. Mr Cook's status, as a member of the RICS, carries an expectation and an obligation to comply with the RICS rules. Mr Cook plagiarised the work of a colleague when submitting an assessment document to RICS and by so doing acted both dishonestly and without the level of integrity required of a member of RICS. Parts of his submission had been lifted verbatim from IV's document. The Panel noted that the relevant passages go beyond a mere similarity in phraseology, although in places minor amendments had been made to change the type of property inspected and the type of negotiation entered into in order to make them relevant to Mr Cook's area of work.
25. The Panel took the view that these failings amounted to a serious falling short of Mr Cook's professional obligations. Plagiarism undermines the integrity of the entire assessment process. Those who are not suitably experienced and competent may be admitted to a particular class of

RICS Membership and thereby claim to have acquired a standard that they have not achieved. If assessment standards are not maintained, then there can be no public trust in the RICS membership.

26. The Panel concluded that Mr Cook's acts and omissions had the potential to cause harm and seriously undermine public trust and confidence in the profession and the regulatory process. In these circumstances, the Panel was satisfied that Mr Cook is liable to disciplinary action.

Sanction

The Panel's Approach

27. The Panel accepted the advice of the legal assessor and had regard to the RICS' Sanctions Policy. The Panel bore in mind that the purpose of sanctions is not to be punitive, though they may have that effect. The purpose of sanctions is to protect the public, declare and uphold the standards of the profession and safeguard the reputation of the profession and of the RICS as its regulator. Sanctions also have a deterrent effect.

28. The Panel was mindful that sanctions must be proportionate and therefore it started by considering the lowest sanction, moving up the scale of gravity only when the sanction under consideration was insufficient to meet the public interest. The Panel considered carefully the mitigating and aggravating factors of this case.

Sanction Decision

29. The Panel took the view that the conduct and behaviour of Mr Cook is aggravated by the following factors:

- he has demonstrated limited insight into the nature and extent of his dishonesty and lack of integrity;
- he has not expressed remorse or regret for his actions or the impact his behaviour has had on his professional standing, his colleagues, his employer, and the wider profession;
- he put his own interests above his professional obligations and the interests of the public for purposes of personal gain;

- he was given the opportunity to review his draft submission to ensure that it reflected his own experiences, but he did not take up that opportunity and went on to submit a document with passages he had plagiarized from his colleague.

30. The Panel noted that Mr Cook appears to be in the early stages of his professional career and noted his assertion that he has dyslexia. The Panel did not regard these features as mitigating factors. The mitigating factors identified by the Panel are as follows:

- Mr Cook has co-operated with RICS and made a self-referral;
- he has admitted the charges in their entirety and accepted that he is liable to disciplinary action;
- his dishonesty and lack of integrity is a one-off incident;
- he has no adverse disciplinary history.

No Action

31. The Panel first considered taking no action. The Panel concluded that, in view of the nature and seriousness of the Rule breaches, to take no action regarding the RICS membership of Mr Cook would be inappropriate as it was unable to identify any exceptional circumstances. Furthermore, the Panel concluded that taking no action would be insufficient to maintain public trust and confidence in the profession and the regulatory process and would undermine rather than uphold the high standards expected of RICS members.

Caution

32. The Panel next considered whether to impose a caution but considered this to be insufficient to mark the seriousness of Mr Cook's dishonest behaviour and lack of integrity. Although Mr Cook admitted the charges, the Panel noted that at no stage during the investigation did he take the opportunity to fully acknowledge the nature and extent of his wrongdoing and the potential impact of his behaviour on the public, his colleagues, his employer, and the wider profession. In the absence of any meaningful insight the Panel concluded that there was a risk of repetition. Furthermore, the Panel took the view that Mr Cook's conduct could not be described as '*minor*' which may justify a sanction towards the lower end of the spectrum. Therefore, the Panel concluded that a caution was not an appropriate and proportionate sanction.

Reprimand

33. The Panel next considered whether to impose a Reprimand. The Panel concluded that the risk of potential harm to the public was so serious that it required more than a formal admonishment to declare and re-affirm the standards expected of registered members. The Panel was also satisfied that a Reprimand would not send a clear message to the wider profession about the standards of conduct expected and would therefore be insufficient to uphold public trust and confidence in the profession and the regulatory process.

Financial Penalty

34. The Panel went on to consider whether a fine should be imposed. The Panel concluded that a financial penalty alone would be purely punitive and would not adequately address the Panel's concern regarding public protection and public trust and confidence in the profession. The Panel also concluded that a fine in combination with a caution, reprimand, conditions or undertakings would not adequately address the Panel's concern regarding public trust and confidence in the profession.

Conditions and Undertakings

35. The Panel next considered whether conditions or undertakings should be imposed on the membership of Mr Cook. The Panel carefully considered the nature and seriousness of the dishonesty and lack of integrity. The Panel concluded that Mr Cook's blatant disregard of the rules of conduct is not amenable to conditions, as the basis for this type of behaviour is an attitudinal failing. The Panel was unable to formulate conditions which would be workable, measurable, or proportionate. In any event, the Panel concluded that neither conditions nor undertakings would adequately address the serious nature of the misconduct and so would undermine rather than uphold the public's trust and confidence in the profession and the high standards of conduct and behaviour expected of RICS members.

36. In these circumstances, the Panel took the view that conditions or undertakings would not be appropriate or sufficient to protect the wider public interest.

Expulsion and Removal

37. The Panel determined that it had no option in this case but to expel Mr Cook and remove him from membership of the RICS. In reaching this conclusion, the Panel had regard in particular to

the nature and gravity of the breach of the conduct rules. The Panel took the view that expulsion and removal is justified and proportionate in this case in order to maintain public trust and confidence in the surveyors' profession and ensure proper standards of conduct are upheld. The Panel concluded that only expulsion and removal would demonstrate that the RICS takes appropriate action to protect the public interest and promote regulatory compliance as well as deter others from future non-compliance.

38. Accordingly, the Panel orders Mr Cook's expulsion and removal from RICS membership.

Publication and Costs

Publication

39. The Panel accepted the legal assessor's advice that in view of the publication policy it is usual for decisions to be posted on the RICS website and published in Modus. The Panel was unable to identify any valid reason for departing from the presumption that Disciplinary Panel decisions will be published. The Panel's overarching objective is to declare and uphold standards and to uphold the reputation of the profession, and publication of its decisions is an essential part of that role.

40. Accordingly, the Panel determined that this decision, in relation to Mr Cook, should be published on the RICS website and in Modus.

Costs

41. RICS made an application for costs in the sum of £2,735 which represents the costs of the investigation and the Paper Hearing.

42. The Panel was satisfied that the case had been properly brought against Mr Cook and noted that if no costs order was made the financial burden of bringing this case would fall on the profession as a whole. The Panel concluded that the costs were fair, reasonable, and proportionate. The Panel took into account Mr Cook's Statement of Means but was unable to identify any good reason for reducing the costs.

43. Accordingly, the Panel ordered Mr Cook to pay RICS' costs in the sum of £2,735. In determining that Mr Cook should pay RICS' costs, the Panel noted that he would be able to negotiate with RICS in order to agree an affordable payment plan

Right of Appeal

44. Mr Cook has 28 days, from service of this decision, to appeal in accordance with Rules 59 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009.
45. In accordance with Rule 60 of the RICS Disciplinary, Registration and Appeal Panel Rules 2009 the Honorary Secretary has 28 days from the service of the notification of this decision to require a review of this decision.