

Disciplinary Panel Hearing

Case of

Mr Richard Barnes BSc Hons, MSc, FRICS, FCI Arb [1146467]

On

Monday 24 – Friday 28 January 2022

At

Remotely via Microsoft Teams

Panel

Nick Turner (Surveyor Chair)

Jane Bishop (Lay Member)

Ron Barclay-Smith (Lay Member)

Legal Assessor

Christopher Hamlet

RICS Presenting Officer

Hugh O'Brien Quinn, Barrister

Respondents' Representative(s)

Paul Parker, Barrister

Witnesses for RICS

Michael Conway FRICS

Robert Davis FRICS

Lindy Patterson QC

Andrew Daws

Dr John Fletcher

Witness for the Respondent

Richard Barnes

Hearing Officer

Ms Jae Berry

Background/Summary

1. Mr Barnes has been a member of RICS since 2006 and a Fellow since 2015.
2. He had been referred to RICS on the basis of allegations that, as part of an application in June 2019 to join the RICS President's Panel of Construction Adjudicators, he submitted an adjudication decision which was not his own.
3. In doing so, it is alleged that Mr Barnes deliberately misled those considering the application and he acted dishonestly and in manner lacking in integrity.

Charges

4. The charges are as follows:

Allegation 1:

Richard Barnes FRICS acted dishonestly in that he:

- (i) in about December 2019, submitted an adjudication decision ('the Decision') to RICS as part of an application to join the RICS Global President's Panel of Dispute Resolvers as a Construction Adjudicator ("the Panel") which did not and which he knew did not accurately represent his own work but was a modified adjudication decision prepared by another practitioner ('Practitioner A') and/or
- (ii) knowingly misled members of an interview panel on 27th April 2020 by falsely asserting that the Decision had been created by him using/following a template.

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

He is therefore liable to disciplinary action under RICS Bye- Law 5.2.2 (a) or (c)

Allegation 2:

Richard Barnes FRICS failed to act with integrity and/or avoid any actions that were inconsistent with his professional obligations by:

- (i) presenting plagiarised work (the Decision) as his own work to RICS as part of an application to join the RICS Global President's Panel of Dispute Resolvers as a Construction Adjudicator ("the Panel") in about December 2019 and thereby misleading the interview panel, and/or
- (ii) presenting to RICS work done in a personal exercise (the Decision) as being compliant with the criteria contained within the RICS Dispute Resolution Service Criteria for Inclusion of Construction Adjudicators on the President's Panel in about December 2019, and/or
- (iii) causing or allowing members of an interview panel on 27th April 2020 to be misled in that he failed to explain that the Decision was not a genuine decision made by him as an adjudicator, and/or
- (iv) causing or allowing members of an interview panel on 27th April 2020 to be misled in that he failed to explain that the Decision was created using a genuine decision made by Practitioner A, and/or
- (v) causing or allowing members of an interview panel on 27th April 2020 to be misled in that he asserted that the Decision had been created by him using/following a template.

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

He is therefore liable to disciplinary action under RICS Bye- Law 5.2.2 (a) or (c)

5. The Charges were denied.

Evidence

6. The Panel received and considered the RICS bundle comprising, inter alia:

- an Opening Note by Mr O'Brien Quinn on behalf of RICS;
- an Agreed Set of Facts;
- witness statements on behalf of RICS from:
 - Mr Michael Conway FRICS (x2);
 - Mr Robert Davis FRICS;
 - Ms Lindy Patterson QC;
 - Mr Andrew Daws; and
 - Dr John Fletcher;
- a copy of Mr Conway's adjudication decision in [REDACTED];
- a copy of Mr Barnes' amended version of [REDACTED];
- Mr Barnes' application to join the RICS President's Panel [the "Decision"];
- a transcript of Mr Barnes' interview on 27 April 2000 [the "Interview"];
- witness statements on behalf of Mr Barnes from;
 - Mr Barnes;
 - Mr Michael Pye;
 - Mr Philip Morris;
 - Ms Adrienne Yarwood.

7. In addition, the Panel received and considered an Opening Note by Mr Parker on behalf of Mr Barnes, and an video recording of the Interview. The Panel watched the video recording in advance of the hearing.

Oral evidence

8. Oral evidence was heard on behalf of RICS from Mr Conway, Mr Davis, Ms Patterson, Mr Daws and Dr Fletcher and on behalf of the Respondent from Mr Barnes himself.

Application by the Respondent that RICS disclose further material

9. In the course of cross-examination of Mr Conway, reference was made to a draft version of his supplementary statement which was said to contain additional detail to that within the final draft. Mr Parker expressed concern that this may reflect an alternate account to that set out in the statement, and ought to be disclosed. Mr O'Brien Quinn, on behalf of RICS, consented to the disclosure of that document to the Respondent.

10. Upon further questioning, Mr Conway confirmed that his initial statement had also been produced on the basis of a draft statement that contained additional details of his account. Mr Parker again submitted that this document ought to be disclosed. Mr O'Brien Quinn, however, submitted that it was not a disclosable document since it was 'unused' material that neither adversely affected nor supported the Respondent's case.

11. The Panel duly heard an application from Mr Parker that the Panel direct the document be disclosed. He submitted that any legal professional privilege attached to the document had been waived by virtue of Mr Conway's own reference to it. The Parties disagreed as to whether an equivalent document would be disclosable in civil or criminal jurisdictions under the CPR or CPIA.

12. The Panel received advice from the Legal Assessor on the concept of legal professional privilege and duty of disclosure. It was advised that the duty of disclosure under the CPR is:

31.6 *Standard disclosure requires a party to disclose only—*

(a) the documents on which he relies; and

(b) the documents which –

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case; and

(c) the documents which he is required to disclose by a relevant practice direction.

13. The equivalent duty of disclosure in criminal proceedings under the CPIA 96 is as follows:

Initial duty of prosecutor to disclose.

(1) The prosecutor must—

(a) disclose to the accused any prosecution material which has not previously been disclosed to the accused and which might reasonably be considered capable of

undermining the case for the prosecution against the accused or of assisting the case for the accused, or

(b) give to the accused a written statement that there is no material of a description mentioned in paragraph (a).

14. The Panel was advised that, in practical terms, the duties are essentially the same when applied to disciplinary proceedings. One must essentially disclose all material relied upon by the 'prosecutor' and all material that undermines that case or may support the defence case.

15. However, the Panel was advised that notwithstanding the question as to whether this material meets the criteria for disclosure under civil or criminal proceedings, the Panel has a power to order disclosure under Rule 121 if it is fair to do so and relevant to the issues under consideration. That power can also supercede any obligation on the prosecutor not to disclose material by reason of legal professional privilege if the Panel considers it appropriate.

16. The Panel determined that notwithstanding the legal position regarding disclosure under the CPIA or the CPR and regardless of whether legal professional privilege, which may attach to the document, had been waived, it was fair and appropriate that the document was disclosed to the Respondent. It considered that aspects of Mr Conway's draft statement appeared to be materially different to that within the final statement relied upon by RICS. As such it could potentially undermine the case for RICS or assist the defence. The Panel did not recognise any distinction in the character of that document, disclosure of which was resisted by RICS, from that of the 2nd draft statement, for which disclosure had been agreed.

Application to amend the charges

17. Having heard oral evidence from Mr Conway that the particular version of his adjudication decision (the [REDACTED] decision) that was accessed by Mr Barnes to generate the Decision may have been in draft form, Mr O'Brien Quinn applied under Rule 122 to amend

the charges to more accurately reflect that. Specifically, he sought to make the following amendments:

- HOC 1(i): insert the words "...or modified draft adjudication decision.." after "...modified adjudication decision..";
- HOC 2(iv): insert the words "...or draft decision..." after "...genuine decision".

18. Mr Parker, on behalf of the Respondent, consented to the application.

19. Having considered advice from the Legal Assessor as to the application of Rule 122, and taking into account the Respondent's position on the application, the Panel concluded that the amendments were necessary and could be achieved without injustice. Accordingly, the application was granted.

Submissions on the factual allegations

On behalf of RICS:

20. Mr O'Brien Quinn invited the Panel to conclude that Mr Barnes' conduct had been dishonest and lacking in integrity.

21. He submitted that the criteria applicable to applications to the President's Panel were set out in plain English. He submitted that Mr Barnes knew that he did not meet the criteria, given that he had not delivered an RICS adjudication decision in the last two years, nor a mock examination decision, nor a mock adjudication from another forum. He submitted that rather than waiting until he did meet the criteria, or contacting RICS for clarification, Mr Barnes chose to submit the Decision. Mr O'Brien Quinn suggested he was driven by a longstanding ambition to be on the President's Panel.

22. Mr O'Brien Quinn submitted that the Decision contained "excessive similarities" to the decision by Mr Conway in [REDACTED]. It retained Mr Conway's words, style and analysis

and amounted to plagiarism. He submitted that it was “obvious” that an individual doing his or her own study, or personal training, as Mr Barnes described in respect of producing the Decision, could not be regarded as a “forum” for the purposes of the application criteria.

23. Mr O’Brien Quinn highlighted that the selection process to the President’s Panel is rigorous and that those appointed make binding decisions on high value matters. He submitted that that process only operates effectively if the work submitted is the candidate’s own.
24. Mr O’Brien Quinn submitted that Mr Barnes knew he had used Mr Conway’s file and his decision in producing his Decision. He knew he had not used a template. He contrasted what Mr Barnes told the interviewing panel about that with his subsequent correspondence on the issue, which demonstrated that he knew the difference between a template and adapting and utilising “other documents”. He made reference, inter alia, to Mr Barnes’ email reflecting that distinction on 15 May 2020 and to the [REDACTED] template Mr Barnes had included in the bundle – which contained no content beyond the appropriate headings.
25. Mr O’Brien Quinn submitted that if Mr Barnes had truly believed his work was based on a template, he would have openly described the decision upon which it was based. He suggested he knew he was being asked about that and his answers were wholly misleading.

On behalf of the Respondent:

26. Mr Parker submitted that Mr Barnes had not been dishonest and that his actions did not amount to a lack of integrity.
27. He submitted that Mr Barnes had been entirely open about what his application contained and made it clear that he had not conducted an RICS adjudication. It was common ground that Mr Barnes had accessed and used Mr Conway’s decision in [REDACTED] in producing the Decision. He submitted that the application criteria allowed the Decision to be submitted as a “mock adjudication from another forum.” He submitted that Mr Barnes took a certain

view about the meaning of the words “mock”, “template” and “forum” which were honest and genuine.

28. Mr Parker conceded that Mr Barnes had copied “too many” of Mr Conway’s words in the Decision, but since he had changed some words, added others and applied his own mind to the entire document, including copied sections, it was representative of his own work. He submitted that much of the original document was pro-forma in any event and Mr Barnes’ use of that structure to produce his Decision was therefore akin to using a template. He suggested it was not right to conclude that there was an absence of skilled analysis on the part of Mr Barnes in producing the Decision.
29. Mr Parker submitted that Mr Barnes had never swayed from his genuine belief that what he was doing was acceptable – and he had made use of a “template”. He suggested it was a tenable view that a template could be more than a basic structure.
30. He further submitted that upon proper analysis, the Decision was not plagiarised. Mr Barnes had applied his own mind and skillset to the content. He suggested that if he had used an “excess of words” from the [REDACTED] decision, it was an honest mistake, rather than the product of dishonesty or want of integrity.
31. Mr Parker submitted that Mr Barnes had reason to consider the Decision was compliant with the criteria, being akin to the use of a “model answer” from another forum. He further suggested that Mr Barnes took comfort from the fact that he had provided the Decision to Mr Conway in advance of its submission and was given no reason to be concerned about it. He submitted that if he had had a dishonest mind, he would not have forwarded the Decision to Mr Conway. The fact that Mr Conway did not read it, he submitted, did not change the fact that Mr Barnes was open about his use of the [REDACTED] decision.

Legal Advice on determination of the factual charges

32. The Panel received written legal advice from the Legal Assessor which was shared with the parties in advance:

General

These proceedings are governed by the RICS Regulatory Tribunal Rules (Version 1, with effect from 2 March 2020) ('the Rules').

The Panel is at the fact-finding stage. All Particulars of Charge set out at p5 and 6 of the RICS Bundle are denied and therefore are to be determined by you. Each head and sub-head of charge must be considered separately, though proof of one may impact on your determination of another.

For example, a finding in respect of HOC 2(i) that the submitted work, as a matter of objective analysis, amounted to plagiarism as a product of a lack of integrity, may inform your position in respect of other charges, but will not necessarily determine your position on dishonesty as alleged at HOC 1.

Burden/Standard of proof

RICS has brought the case and has to prove all facts in dispute to the civil standard – that is, such that you are satisfied they are more likely to have occurred as alleged than not. The Respondent does not have to prove or disprove anything.

The standard of proof does not vary according to the seriousness of the allegations. However, the more serious the consequences of a finding for the Respondent, the more care you should take in assessing the quality/strength of the evidence underlying that charge.

Assessment of the evidence

The Panel will need to consider the quality of the evidence, oral or documentary, by reference to its credibility, reliability and relevance.

Credibility is essentially concerned with whether a witness (or document) appears to be telling the *truth*. That can be derived from its consistency with other established or agreed facts; its consistency within itself ('internal consistency'); the inherent credibility of the account; and/or the demeanour of the witness in providing the evidence.

Care must be taken not to equate a polished performance by a witness with an inherently credible account, or vice-versa. Similarly, a conclusion that a witness (or document) is credible does not mean full weight can/must be attached to everything that is said. One might consider aspects of an account to be credible and others to be untruthful.

Reliability is concerned with the *accuracy* of evidence. Markers of reliability include the precision and consistency with which details can be recalled, insofar as they can be measured against other established or agreed facts, or the manner in which challenges to the evidence are addressed (in cross examination, for example). It follows that a vague recollection may indicate poor reliability in an otherwise credible witness. Similarly, a document produced close in time to the relevant events is likely to carry more weight than one produced some time afterwards.

Consideration of **relevance** is vital in deciding whether evidence assists you on the issues in question. Evidence that is credible and reliable will carry little weight or no weight unless it is relevant to the facts in question.

Dishonesty

The leading case is *Ivey v Genting Casinos [2017] UKSC 67*. The Supreme Court stated at para 74:

*“When dishonesty is in question the fact-finding tribunal must **first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts.** The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; **the question is whether it is genuinely held.** When once his actual state of mind as to knowledge or belief as to facts is established, **the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.**”*

The proper test is therefore:

- a. What did the Respondent (subjectively) know or believe to be the factual situation at the time, and, having established that;
- b. Taking a) into account, was his conduct (objectively) dishonest according to the standards of ordinary decent people?

Reference to an objective standard in this context means to consider the viewpoint of hypothetical members of the public who are fully apprised of all the facts and evidence in the case.

Lack of Integrity

Whilst dishonest conduct will almost always involve a lack of integrity, the same does not necessarily follow in reverse.

The leading case is *Wingate and another v SRA; Malins v SRA [2018] EWCA Civ 366*. Lord Justice Jackson stated at para 97:

In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. ... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

He continued at para 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.

It follows that one might consider an act to involve a lack of integrity even if it does not reach the threshold for dishonest conduct under *Ivey*.

The Panel will wish to consider this issue by reference to the RICS Global Professional and Ethical Standards document which refers to a definition of integrity as "...being honest and straightforward in all that you do". You may consider that being "straightforward" denotes conduct beyond mere honesty and is akin to the heightened standards of professional behaviour envisaged in the *Wingate* judgment.

Good Character

Where the Respondent, as here, has an unblemished disciplinary record, he is entitled to a "good character" direction. The effect of the direction is two-fold:

- a. he may be less likely, than someone without a clean record, to have acted as alleged (propensity);
- b. he may be more likely to be telling the truth (credibility).

This will not determine the outcome on the issues, but it must be taken into account when considering the evidence. It is for the Panel to determine what weight to give good character.

Other considerations

The Panel is entitled to draw inferences (reasonable conclusions from the evidence), but must not speculate (make assumptions about facts or evidence not before you).

The submissions by the parties do not amount to evidence. They are there to assist and persuade but can be rejected or accepted as the Panel deems appropriate. It is for you alone to determine the issues.

Reasons must be given for the conclusions reached on all key issues but there is no requirement to record every point made in evidence or in submissions. What is important is that the parties clearly understand how you have reached your conclusions and why.

33. The Parties did not comment upon or challenge this advice.

Determination on the charges, as amended

34. Having received advice from the Legal Assessor to confine its factual determinations to the primary assertions – and *not* to consider at this stage whether they rendered the Respondent liable to disciplinary action, the Panel made the following findings of fact:

Allegation 1:

Richard Barnes FRICS acted dishonestly in that he:

(i) in about December 2019, submitted an adjudication decision ('the Decision') to RICS as part of an application to join the RICS Global President's Panel of Dispute Resolvers as a Construction Adjudicator ("the Panel") which did not and which he knew did not accurately represent his own work but was a modified adjudication decision **or draft adjudication decision** prepared by another practitioner ('Practitioner A') and/or

Proved.

The Panel's reasoning was as follows:

The Panel noted that the Respondent did not dispute submitting the Decision as alleged, knowing that it was a modification of Mr Conway's decision or draft decision, in the [REDACTED] case. The issue concerned whether, by virtue of those modifications, it did not represent his own work – and he knew that to be the case.

The Panel took careful account of the evidence from Mr Conway and Dr Fletcher, in particular, on this issue. Mr Conway explained the process he adopted in producing his decisions and how he had honed his style over several years. He explained that there was a skill in ordering the facts and analysing the issues. Dr Fletcher explained that the purpose of the selection process for the RICS President's Panel was to identify whether the candidates had the necessary skillset to undertake a demanding quasi-judicial role involving high-value disputes. Attention was drawn, in the course of evidence, to the application form itself, and the underlying purpose of providing an adjudication decision, whether real or 'mock', that demonstrated one's personal capacity to deliver decisions that were fair, well considered and robust. Co-authored decisions were not acceptable for that reason.

The Panel also had careful regard to the evidence from Mr Barnes himself. It was not persuaded by his assertion that "overwriting" Mr Conway's decision in the context of this application was no different to drawing from a template or indeed from a colleague's decision, which he suggested was commonplace in his day-to-day work. Populating a template that provided only a structure for the decision is quite different, the Panel concluded, to amending an existing decision in which a critical analysis had already been applied to a given set of facts.

Whether or not adjudicators commonly make use of colleagues' prior work in formulating their own decisions, evidence for which was anecdotal, the Panel considered that it was not a practice that would ever be acceptable in the context of an application for a quasi-judicial position of this nature.

The Panel also took account of Mr Parker's submissions that Mr Barnes had made changes to the original decision by Mr Conway. He conceded that Mr Barnes may have used too much of Mr Conway's original words but had applied his mind even to content that had been directly copied and had inserted original text in several areas, such that the document had become his own work.

The Panel recognised that the Decision was not a direct copy of Mr Conway's original. However, it was not persuaded by the assertion that "overwriting" and adopting whole sections, or the tenor of whole sections of Mr Conway's decision did not mean the amended version was not his own work. Taking account of the evidence of Mr Conway and Dr Fletcher, the Panel considered that there was a skill in ordering, analysing and summarising the evidence in a given matter which could not be fully or accurately assessed if one adopted, in whole or in part, the approach taken by another adjudicator. What Mr Barnes did went well beyond merely aping the structure of Mr Conway's decision.

The Panel rejected the suggestion that "cutting and pasting" the same or similar words as Mr Conway did not amount to plagiarism given that he had "applied his mind" to those words and agreed with them. That practice would, in the Panel's view, inevitably undermine the assessors' ability to gauge Mr Barnes' skills in marshalling the facts and reaching a considered decision wholly independently.

The Panel concluded on this basis that what was submitted by Mr Barnes did not amount to his own work.

As to whether Mr Barnes *knew* it did not represent his own work, the Panel took account of Mr Barnes' evidence that he gave the application a great deal of thought and felt he knew the criteria for the application "inside out". The Panel considered it likely in that context, and in view of his wider experience, that he understood not only what material would fulfil the letter of the criteria, but the purpose for which that material was required. On balance, the Panel considered Mr Barnes would have known that the submission of an amended version of the [REDACTED] decision, upon proper analysis of the way in which it was created, did *not* fulfil the criteria for a "mock decision from another forum", nor was it representative of his own work.

The Panel considered it relevant in that regard that Mr Barnes' correspondence after the Interview suggested that he drew a distinction between "mock adjudications" and "other decisions". This did not sit easily with his assertions that he truly believed the Decision was based on a template, given that he knew the source was a genuine decision or a draft genuine decision by Mr Conway.

The Panel considered that Mr Barnes' responses in interview to questions about the Decision were also instructive as to his state of mind in respect of the document. Having taken account of the video and transcript of the interview on 27 April 2020 the Panel took the view that Mr Barnes, when asked by Mr Davis "*...it strikes me that you follow a template...*", knew that he was referring to the Decision itself, rather than how templates in general are utilised. As such, the Panel considered that if Mr Barnes' held a genuine belief that his methodology in producing the Decision was legitimate, he would have taken the opportunity at that stage to disclose his use of Mr Conway's decision as a template. Instead, he talked about his use of templates in general by reference to a basic structure to which he would add the relevant detail.

The Panel took the view that that was deliberate obfuscation borne of the fact that he knew the interviewing panel would be concerned about his use of and reliance upon Mr Conway's decision in [REDACTED].

Taking all of this into account, the Panel concluded that:

- a) Mr Barnes knew at the time of his submission of the Decision that it was not representative of his own work; and
- b) ordinary, decent people would consider that to be dishonest.

(ii) knowingly misled members of an interview panel on 27th April 2020 by falsely asserting that the Decision had been created by him using/following a template.

Proved.

The Panel's reasoning was as follows:

The Panel first considered what a "template" is. It took the view that whilst precise definitions may differ, the fundamental feature of a written 'template' is that it provides a set structure for, but not the content of, a document. To use the terms preferred by Mr Barnes in this matter, it is a document that provides the "bones" of a piece of work, without the "meat". A document containing the "meat", that is, detail and analysis pertaining to a particular set of facts, could never be considered a

‘template’, though there may be circumstances where access to and use of such a document might be appropriate.

The Panel next considered whether Mr Barnes had held a genuine belief that the Decision had been created by him using what he *understood* to be a template. It took account of his evidence that the use of colleagues’ work in drafting decisions of this nature was commonplace. It further took account of the submissions made by Mr Parker on his behalf that the [REDACTED] decision was capable of being considered a template insofar as it drew upon a number of standardised headings, paragraphs and wording that were common to “smash and grab” disputes.

The Panel took the view that a distinction must be drawn between the use of colleagues’ work in developing one’s drafting skills in the course of employment and professional development, and the equivalent use for the purposes of an application in which one’s own skillset is under assessment. The latter, in the Panel’s view, would inevitably undermine the ability of assessors to glean a true and fair picture of a candidates’ ability. It considered that Mr Barnes was an intelligent man with sufficient experience of adjudication and sufficient understanding of the requirements of the role for which he was applying to know that his use of the [REDACTED] decision as the basis for his Decision did not equate to using a template in the ordinary course of his work.

Once again, having taken account of the video and transcript of the interview on 27 April 2020, the Panel took the view that Mr Barnes, when asked by Mr Davis “...it strikes me that you follow a template...”, knew that he was referring to the Decision itself, rather than how templates in general are utilised. As such, the Panel considered that if Mr Barnes’ held a genuine belief that his methodology in producing the Decision was legitimate, he would have taken the opportunity at that stage to disclose his use of Mr Conway’s decision as a template. Instead, he talked about his use of templates in general by reference to a basic structure to which he would add the relevant detail. The Panel, again, took the view that that was deliberate obfuscation borne of the fact that he knew the interviewing panel would be concerned about his use of and reliance upon Mr Conway’s decision in [REDACTED] because it was not, in any practical sense, a template.

It follows that the Panel concluded that:

- a) Mr Barnes' knew his Decision had not been created using a template; and**
- b) ordinary, decent people would consider his statement to the interview panel to have been knowingly misleading and dishonest.**

Allegation 2:

Richard Barnes FRICS failed to act with integrity and/or avoid any actions that were inconsistent with his professional obligations by:

- (i) presenting plagiarised work (the Decision) as his own work to RICS as part of an application to join the RICS Global President's Panel of Dispute Resolvers as a Construction Adjudicator ("the Panel") in about December 2019 and thereby misleading the interview panel, and/or

Proved.

The Panel's reasoning was as follows:

For the reasons expressed in respect of HOC 1(i), the Panel considered that on a fair analysis of the whole Decision, the work presented by Mr Barnes was plagiarised – in the sense that he knew it was not representative of his own, independent work.

It follows that in presenting it as part of his application to join the President's Panel, he misled the interview panel as to his own skillset. This was a clear breach of the standards of integrity demanded of members of RICS under the Global Professional and Ethical Standards, in particular:

- be honest and straightforward in all that you do.**
- be trustworthy in all that you do.**
- Be open and transparent in the way you work.**
- Not take advantage of a client, a colleague, a third party or anyone to whom you owe a duty of care.**

(ii) presenting to RICS work done in a personal exercise (the Decision) as being compliant with the criteria contained within the RICS Dispute Resolution Service Criteria for Inclusion of Construction Adjudicators on the President's Panel in about December 2019, and/or

Proved.

The Panel's reasoning was as follows:

The Panel first considered whether there was any ambiguity in the wording of the criteria. Whilst acknowledging Dr Fletcher's observation that the wording could be "tighter", the Panel was satisfied that the criteria provided adequate direction to Mr Barnes as to whether his experience was likely to qualify for an application to be made. However, the Panel also took the view that insofar as the wording generated any ambiguity in Mr Barnes' mind, it was incumbent on him to seek clarification from RICS. It noted that Mr Barnes did not himself consider the criteria to be ambiguous.

The Panel rejected the assertion that Mr Barnes held a genuine belief that the Decision was a "mock adjudication from another forum". It took careful account of the submissions made on his behalf that because certain details of Mr Conway's decision had been changed and because it was not Mr Barnes' own decision, it was not a real decision – and was therefore "mock". However, the Panel considered that overwriting, amending and adopting parts of a real decision was to be distinguished from the creation of a decision from scratch, based on a fictitious scenario. In the latter case, one could not benefit from and draw upon an existing analysis of the facts and rationale in formulating one's own decision. On balance, the Panel was satisfied that Mr Barnes recognised the distinction and did not hold a genuine belief that having drawn upon Mr Conway's decision as he did in producing the Decision, it was tantamount to a "mock decision" in compliance with the spirit or letter of the criteria.

In addition, the Panel was not persuaded that Mr Barnes held a genuine belief that his own study or training in producing the Decision amounted to a "forum" for the purposes of that part of the criteria. It considered that on any definition of the word, an individual could not be deemed a forum. The Panel took account, in particular, of the evidence of Dr Fletcher in that regard, who highlighted that given the underlying purpose of submitting the document was to allow the assessors to evaluate the

skillset of the applicant, it was especially important that the “forum” was not the applicant himself. The Panel considered that that view was rooted in common sense. It concluded that Mr Barnes knew himself that he was not a forum and that his Decision did not meet that part of the criteria.

It follows that Mr Barnes’ decision to present this work was lacking in integrity. This was a clear breach of the standards of integrity demanded of members of RICS under the Global Professional and Ethical Standards, in particular:

- be honest and straightforward in all that you do.**
- be trustworthy in all that you do.**
- Be open and transparent in the way you work.**
- Not take advantage of a client, a colleague, a third party or anyone to whom you owe a duty of care.**

(iii) causing or allowing members of an interview panel on 27th April 2020 to be misled in that he failed to explain that the Decision was not a genuine decision made by him as an adjudicator, and/or

Not Proved.

The Panel’s reasoning was as follows:

The Panel took account of the agreed position of the Parties that the oral evidence heard from the interviewing panel members was that they either did not consider the issue at all, or did not consider the Decision to have been a genuine decision made by Mr Barnes as an adjudicator. It follows that there was no evidence that Mr Barnes caused them to be misled in that regard.

(iv) causing or allowing members of an interview panel on 27th April 2020 to be misled in that he failed to explain that the Decision was created using a genuine decision **or draft decision** made by Practitioner A, and/or

Proved.

The Panel’s reasoning was as follows:

For the reasons expressed in relation to HOC 1(ii), the Panel was satisfied that Mr Barnes knew, when asked about his use of templates, that the interviewing panel were interested in how he had produced the Decision. By giving a response that was directed at template use in general, the Panel concluded that Mr Barnes was deliberately avoiding reference to his use of the [REDACTED] decision in preparing the Decision.

The Panel was satisfied that that was conduct lacking in integrity by Mr Barnes. This was a clear breach of the standards of integrity demanded of members of RICS under the Global Professional and Ethical Standards, in particular:

- **be honest and straightforward in all that you do.**
- **be trustworthy in all that you do.**
- **Be open and transparent in the way you work.**
- **Not take advantage of a client, a colleague, a third party or anyone to whom you owe a duty of care.**

(v) causing or allowing members of an interview panel on 27th April 2020 to be misled in that he asserted that the Decision had been created by him using/following a template.

Proved.

The Panel's reasoning was as follows:

For the reasons expressed in relation to HOC 1(ii), the Panel was satisfied that Mr Barnes knew, when asked about his use of templates, that the interviewing panel were interested in how he had produced the Decision. By giving a response that was directed at template use in general, the Panel concluded that Mr Barnes was deliberately avoiding reference to his use of the [REDACTED] decision in preparing the Decision.

The Panel was satisfied that that was conduct lacking in integrity by Mr Barnes. This was a clear breach of the standards of integrity demanded of members of RICS under the Global Professional and Ethical Standards, in particular:

- **be honest and straightforward in all that you do.**

- **be trustworthy in all that you do.**
- **Be open and transparent in the way you work.**
- **Not take advantage of a client, a colleague, a third party or anyone to whom you owe a duty of care.**

Liability to disciplinary action

35. The Panel considered the submissions from the parties on this issue. Both parties agreed that as a product of the findings of fact, Mr Barnes had breached Rule 3 of the Rules of Conduct for members. Further, in failing to adhere to the published Global Professional and Ethical Standards specifically relating to integrity, Mr Barnes was liable to disciplinary action under Bye-Law 5.2.2 (c).

36. Mr Parker submitted that Mr Barnes was not liable for disciplinary action under Bye-Law 5.2.2(a) because:

- a. such a finding added nothing to a determination under 5.2.2(c); and
- b. the “inward-looking” nature of his conduct had no impact on the reputation of RICS as a whole.

37. Mr Parker further submitted that the case had been brought on the basis that Mr Barnes was liable under Bye-Law 5.2.2 (a) *or* (b), but not both. Mr O’Brien Quinn submitted that the Panel was not required to specify which ground of Bye-Law 5.2.2 applied to Mr Barnes’ conduct, what was important was that it was determined that liability to disciplinary action arose by virtue of one of the relevant grounds.

38. The Legal Assessor gave advice to the Panel that a decision on liability to disciplinary action was a matter for its independent determination. It is a distinct decision to a determination on the facts. The Panel was advised that it did not follow, therefore, that liability arises 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.

39. Having considered the parties submissions, and the submission about the case Mr Barnes came to meet, the Panel determined that Mr Barnes was liable to disciplinary action under RICS Bye-Law 5.2.2 (c) alone. The Panel specified that that finding was not to be interpreted as fettering the Panel's consideration of all the circumstances of the case when it came to sanction, including the potential reputational damage to RICS arising from the proven dishonesty.

Submissions on sanction

40. The Panel received written submissions from Mr Parker and oral submissions from both parties as to sanction. It took account of the authorities referred to by Mr Parker of *R v Hassan* [2013] EWHC 1887 (Admin), *Watters v NMC* [2017] EWHC (Admin) 1888, and *Salha v GMC* [Privy Council Appeal No. 32 of 2003]. It also took account of the authorities referred to by Mr O'Brien Quinn of *GMC v Theodoropoulos* [2017] EWHC 1984 (Admin) and *SRA v Sharma* [2010] EWHC 2022 (Admin).

41. In addition, the Panel received a report on behalf of Mr Barnes from Dr Jennifer Haigh, Chartered and Counselling Psychologist, which confirmed that Mr Barnes met the diagnostic criteria for Dyslexia and set out the impact it had on his cognitive skills.

42. 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 RICS as its regulator and to protect the public. Sanctions must be proportionate to the matters found proved.

43. The Panel paid careful attention to the advice of the Legal Assessor and to the Sanctions Policy of RICS. It recognised that it had a duty to take a proportionate and fair approach to the issue of sanctions. It considered carefully the mitigating and aggravating factors of this case.
44. The Panel took account of the features of the case that were highlighted by Mr O'Brien Quinn on behalf of RICS, including the fact that Mr Barnes' conduct was of a continuing nature after the application was submitted which was concealed by the dishonest answers he gave in interview. Mr O'Brien Quinn submitted that there was no attempt by Mr Barnes to rectify that act and whilst he expressed regret during the RICS investigation, he did not accept he had done anything wrong during his evidence to the Panel.
45. Mr O'Brien Quinn submitted that though the dishonesty did not result in personal gain, it did lead to Mr Barnes being awarded a pass. But for the intervention of Mr Conway, among others, it would have led to Mr Barnes being appointed to the RICS President's Panel. Mr O'Brien Quinn submitted that that was a position that would have allowed Mr Barnes to make binding decisions that would have affected people's lives. Mr O'Brien Quinn suggested that it would undermine the public's confidence in RICS if Mr Barnes had been appointed to that position by his subversion of the selection process.
46. Mr O'Brien Quinn submitted that the evidence of Mr Barnes' dyslexia had no bearing whatsoever on his dishonest acts.
47. Mr Parker invited the Panel to adopt a "contextualised and nuanced" approach to sanction. He submitted that a distinction should be drawn between Mr Barnes' conduct and other dishonesty, such as that involving fraud or theft. He also suggested that Mr Barnes' conduct concerned a singular act that falls at the lower end of the scale.

48. In respect of the report from Dr Haigh, Mr Parker clarified that it was not suggested that the dyslexia excuses the dishonest conduct, but it provided “extenuating context” to those matters which may have had a bearing on his decision making.

49. Mr Parker submitted that expulsion from the register would have serious consequences for Mr Barnes personally and professionally. A statement of means was provided and considered. Mr Parker submitted that there was no risk of repetition, had been no financial gain and there had been no risk to clients. He further submitted that the conduct itself was purely internal to RICS and no reputational damage resulted.

Decision on sanction

50. The Panel considered the following aggravating features to be present in this case:

- The dishonest conduct was denied.
- Little if any genuine insight was demonstrated, even with hindsight, into the nature of the misconduct.
- His conduct was motivated by career advancement and the potential for enhanced professional status.
- The dishonesty was of a continuing nature, from the point of the application being submitted in December 2019, to the point it was discovered in April 2020.
- The dishonesty was concealed by the answers given in interview in April 2020.
- It was brought to light only by the intervention of others.

51. The Panel considered the following mitigating features to be present in this case:

- He had no previous disciplinary history.
- The conduct was isolated in the context of his whole career.
- There was no risk of repetition.
- His dyslexia may have had some bearing on his conduct, albeit not such that it excused or explained it.

52. The Panel considered the matters too serious for no sanction to be imposed. The dishonest misconduct was serious, and it was necessary to mark the wrongdoing to restore public confidence and to uphold standards of conduct across the profession. It was mindful of the fact that any instance of dishonest conduct could seriously undermine public confidence and trust in the profession and thereby renders the Member liable to expulsion. However, the Panel was advised that it should consider all sanctions available to it, starting with the least restrictive. In that context, the Panel was concerned by the nature of the misconduct in this case and the failure of Mr Barnes to 'come clean' about the way he produced his application over the weeks that followed its admission. However, it considered that Mr Barnes was unlikely to repeat the conduct and that there were other relevant mitigating factors to consider in this case.

53. Taking all these factors into account, the Panel considered that a Caution would be wholly inadequate in reflecting the gravity of the wrongdoing and in order to maintain public confidence in and standards across in the profession. It had careful regard to all the other sanctions available to it. The Panel considered that though dishonesty of this nature would ordinarily result in expulsion, the evidence of Mr Barnes' good character, the mitigating features and the positive testimonials, suggested that it was an aberration that did not reflect his usual character or wider professional practice.

54. It followed that in the Panel's assessment that the need to maintain trust and confidence in RICS and to uphold good standards of conduct could be achieved without imposing the ultimate sanction. The Panel concluded that the appropriate and proportionate response in this case was as follows:

- a. Reprimand
- b. Fine of £5,000
- c. Conditions, in the following terms:

- i. Mr Barnes may not make an application for inclusion on the RICS President's Panel until a period of 5 years has elapsed from the date of this decision;
- ii. Any application made by Mr Barnes to the RICS President's Panel must meet the criteria by other means than a "mock adjudication from other forums";
- iii. Mr Barnes must attend a course on professional ethics, the precise nature of which to be determined by RICS, within 24 months of the date of this decision.

55. The Panel considered that the period of 5 years set out at Condition i) was necessary and appropriate to allow Mr Barnes to reflect on his actions and develop insight in a way he had not thusfar. It would also allow him time to develop relevant experience in advance of any such application.

56. Breach of any or all of these conditions, or failure to pay the fine within the reasonable timescales set by RICS will result in automatic expulsion.

Publication and Costs

57. 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 and published in Modus.

58. The Panel 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.

59. The Panel orders that this decision be published on the RICS website and in Modus.

60. Both parties addressed the Panel regarding costs. Mr O'Brien Quinn on behalf of RICS asked for costs and had provided a schedule to the Respondent in the sum of £28,370. Mr Parker, on Mr Barnes' behalf, submitted that the proper interpretation of the published guidance on costs was that they were confined to £2,650.

61. The Panel considered carefully the costs sought and the submissions made thereto. It concluded that the costs submitted by RICS were incurred reasonably as a product of having to call evidence to prove the charges denied by Mr Barnes. It was not right that the profession should bear those costs. However, taking account of Mr Barnes' means, the Panel concluded that it was reasonable to reduce the figure sought to £25,000.

62. Accordingly, the Panel orders that Mr Barnes pay to RICS costs of £25,000.

Appeal Period

63. Mr Barnes may appeal against this decision within 28 days of notification of this decision, in accordance with Rules 152 - 165.

64. In accordance with Rule 166 - 177 of the Regulatory Tribunal Rules the RICS' Chair of Governing Council may apply to the Appeal Panel for a review of a finding or Regulatory Sanction imposed by a Disciplinary Panel, if s/he believes that the Regulatory Sanction is unduly lenient.