

Disciplinary Panel Hearing

Case of

Thomas Walden [00153508]

On

Monday 12 June - Thursday 15 June 2023

Held Remotely via Teams

Panel

Nick Hawkins (Lay Chair)
Angela Jones (Lay Member)
Nick Turner (Surveyor Member)

Legal Assessor

Tim Grey

Representatives for the parties

Marie-Claire Frankie appeared on behalf of RICS

The Member was not present and was unrepresented

Hearing Officer

Jae Berry

Thomas Walden appears before the RICS Disciplinary Panel in connection with the following allegations (as amended):-

The formal charge is:

1. Between 26 November 2018 and 20 August 2019 Thomas Walden submitted 41 business expense claims for the provision of materials and welfare facilities to his employer, Kier Services Ltd, up to a maximum total value of £967. Thomas Walden acted dishonestly in that he submitted those claims knowing those business expense claims did not relate to legitimate business expenses.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members:

5.2.2(c).

2. Between 3 December 2018 and 27 June 2019 Thomas Walden submitted business expense claims for 99 taxi journey fares to his employer, Kier Services Ltd, up to a maximum total value of £2,688. Thomas Walden acted dishonestly in that he submitted those claims knowing that those business expense claims did not relate to legitimate business expenses.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c).

3. In June 2019 Thomas Walden acted dishonestly by submitting as genuine 2 taxi fare receipts, which he knew to have been false, in support of business expense claims for taxi journeys on 14 and 15 June 2019.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c).

4. In June 2019 Thomas Walden acted dishonestly by submitting as genuine 2 taxi fare receipts, which he knew to have been false, in support of business expense claims for taxi journeys on 24 and 25 June 2019.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c)

5. Between 10 December 2018 and 4 June 2019 Thomas Walden submitted business expense claims for in excess of 280 toll fee payments for use of the Birkenhead Tunnel to his employer, Kier Services Ltd, up to a maximum total value of £872. Thomas Walden acted dishonestly in that he submitted those claims knowing that some or all of those business expense claims did not relate to legitimate business expenses.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c)

6. Between 13 January 2019 and 17 February 2019 on 7 occasions Thomas Walden claimed from his employer, Kier Services Ltd, the repayment of costs in relation to eye tests and contributions towards glasses up to a maximum value of £260. Thomas Walden acted

dishonestly in that he made some or all of those claims knowing that they were duplicated claims.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c)

7. Between 9 June 2019 and 14 September 2019 Thomas Walden ordered materials to the value of £2,968.11 for his personal use on 12 occasions using his employer's procurement account, Kier Procurement. Thomas Walden acted dishonestly in that he knew that he was not authorised to use Kier Procurement to obtain materials for his personal use.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c)

8. Between 26 November 2018 and 20 August 2019 Thomas Walden submitted 41 business expense claims for the provision of materials and welfare facilities to his employer, Kier Services Ltd, up to a maximum total value of £967. Thomas Walden acted without integrity in that he submitted those claims when he knew or ought to have known that those business expense claims did not relate to legitimate business expenses.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c)

9. Between 3 December 2018 and 27 June 2019 Thomas Walden submitted business expense claims for 99 taxi journey fares to his employer, Kier Services Ltd, up to a maximum total value of £2,688. Thomas Walden acted without integrity in that he submitted those claims when he knew or ought to have known that those business expense claims did not relate to legitimate business expenses.

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

Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members: 5.2.2(c)

10. Between 10 December 2018 and 4 June 2019 Thomas Walden submitted business expense claims for in excess of 280 toll fee payments for use of the Birkenhead Tunnel to his employer, Kier Services Ltd, up to a maximum total value of £872. Thomas Walden acted

without integrity in that he submitted those claims when he knew or ought to have known that some or all of those business expense claims did not relate to legitimate business expenses.

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

**Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members:
5.2.2(c)**

11. Between 13 January 2019 and 17 February 2019 on 7 occasions Thomas Walden claimed from his employer, Kier Services Ltd, the repayment of costs in relation to eye tests and contributions towards glasses up to a maximum value of £260. Thomas Walden acted without integrity in that he made some or all of those claims when he knew or ought to have known that they were duplicated claims.

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

**Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members:
5.2.2(c)**

12. Between 9 June 2019 and 14 September 2019 Thomas Walden ordered materials to the value of £2,968.11 for his personal use on 12 occasions using his employer's procurement account, Kier Procurement. Thomas Walden acted without integrity in that he knew or ought to have known that he was not authorised to use Kier Procurement to obtain materials for his personal use.

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

**Mr Walden is therefore liable to disciplinary action under RICS Byelaw for Members:
5.2.2(c)**

Response

In correspondence the Member denied all the charges

Background

The case concerns expenses claims made by the member from his employer Kier Ltd from late 2018 to 2019. Those claims concerned claims for (i) materials the Member asserted he had initially purchased personally for a project, or expenses he had incurred in a personal capacity (ii) taxi journeys he claimed to have undertaken to and from the site of a project (iii) Mersey toll tunnel fees he claimed for journeys purportedly taken to and from the site of a project and (iv) the submission of the same expenses claim on 7 occasions for eye tests. The Member was further

alleged to have had delivered to his home address building materials bought by the Member on behalf of Kier, but for his own personal use.

The Member's employer had detected the issues regarding his expenses after he had submitted two taxi receipts for £49.25 dated 14 and 15 June 2019, respectively. Two further receipts had been submitted for 24 and 25 June 2019 in the same amounts. Kier was suspicious that the Member had doctored the original receipts and submitted them afresh for two "new" dates, having altered the dates himself. A full investigation was therefore carried out revealing the concerns forming the basis of RICS case. On investigation RICS alleged that in each case the submission of the claims for expenses and the obtaining of materials as set out above, lacked integrity and was dishonest.

Hearing

Application to Proceed in Absence

1. On behalf of RICS, Ms. Frankie made an application to proceed in absence. In so submitting she took the Panel to various correspondence demonstrating that the Member had been notified about an allegation being raised against him. She submitted that the correspondence satisfied the service provisions at Rule 54 within the applicable Disciplinary, Registration and Appeal Panel Rules ("the Rules") specifically Version 8 with effect from 1 October 2019. In addition, it was clear that the Member had received correspondence as he had responded to the correspondence indicating his intention not to attend the hearing.
2. Ms. Frankie went on to address the Panel on the fairness of proceeding in absence. She submitted that the Member had made no application to adjourn the case and had provided no evidence of any sort suggesting he was prevented from attending a remote hearing. Ms. Frankie further submitted that balancing the public interest against the interests of the Member required the hearing to go ahead. In light of the background, it was clear the Member knew the hearing could go ahead in his absence and he had voluntarily absented himself.
3. The Panel accepted the advice of the Legal Assessor that the decision to proceed in the absence of the Registrant was a decision to be taken with the utmost care and caution. The Panel had regard to the criteria set out in *R v Jones [2002] UKHL 5* and the guidance in the case of *General Medical Council v Adeogba [2016] EWCA Civ 162*.
4. The Panel noted that the Registrant had been informed in correspondence of the date and time of the hearing. When he indicated he would not be in attendance, RICS had offered to move the hearing date if it would secure his attendance. The Member had not taken RICS up on the offer. Nor had the Member made any application to postpone or adjourn the hearing. He had made his intention not to attend clear. The Panel was conscious of the service

provisions and was content they had been compiled with. The Panel concluded that the Member had been given sufficient notice had he wished to attend and take an active part in the hearing. The Panel concluded he had therefore voluntarily absented himself from the proceedings.

5. The Panel carefully considered whether it was fair in the circumstances to proceed in the Member's absence. The Allegation concerned events dating back to 2018, and issues that had come to light in late 2019. The issues raised disclosed a potential risk to the public and the wider public interest. There was a public interest in the timely and expeditious resolution of the concerns the case raised. In all the circumstances the Panel concluded that there would be no merit in adjourning the case. It concluded that balancing the interests of the Member with the interests of the public in conducting an expeditious hearing, meant it was both fair and reasonable to proceed in absence on this occasion. The Panel drew no adverse inference from the Member's absence.

Hearsay Application

6. Ms. Frankie made a further application to adduce the evidence contained in the witness statement of Rebecca Lee, an assistant at Kier Ltd, who had prepared a non-verbatim note of an interview conducted with the Member during the course of the Kier investigation. In making the application Ms. Frankie took the Panel to the efforts made to secure Ms. Lee's attendance, all of which had been fruitless. She submitted that the nature of her evidence was limited to supporting assertions made by another witness also present in the meeting, and refuting the assertions made by the Member, that the meeting record was wrong. The evidence was therefore not the sole or determinative evidence in the case.
7. The Panel accepted the advice of the Legal Assessor. It was advised that hearsay evidence was generally admissible in regulatory proceedings and specifically RICS proceedings. The test for admissibility was relevance and fairness. It was for the Panel to decide whether to admit the evidence having considered that test. The Panel was advised to bear in mind the criteria set out in the case of *Thorneycroft v NMC [2014] EWHC 1565 (Admin)*.
8. The Panel noted that RICS had gone to great lengths to secure Ms. Lee's attendance but had been unable to do so. It noted the evidence was confined to a narrow ambit and was not determinative of the issues in the case. It noted the Member had been informed of the hearsay application and had not objected to it. The Panel therefore determined that it was fair to admit the evidence.

Amendment of the Charge

9. Pursuant to Rule 122 of the Rules, the Panel determined to amend the charge in the terms set out above. In so doing it very carefully considered the fairness to all parties, most particularly the Member, who was not present.
10. It determined that notwithstanding the Member was not present, he had been provided with an opportunity to answer the charge in the proposed amended form. The simplification of the charge to its previous form reflected the way in which it had been put to the Member at the outset of the RICS investigation in November 2019. The Member had thereafter responded in terms to those concerns.
11. The Panel further asked itself whether the amendments materially altered the scope of the case. It determined they did not. To the contrary, the only material difference to the case was to make RICS evidential burden all the greater, which was arguably to the Member's advantage.
12. The Panel therefore considered it could make the amendments without injustice to any party. The amendments were both necessary and desirable to simplify the charge and ensure transparency of decision-making.

Closing Submissions

13. On behalf of RICS Ms. Frankie took the Panel through the charge and identified the paragraphs that corresponded to each other. Specifically, she identified that the same facts had been pleaded in relation to some of the paragraphs of the charge but with a lack of integrity alleged in one paragraph and dishonesty alleged in the other. All alleged a breach of Rule 3 of the Rules of Conduct for Members 2007, which related to ethical behaviour.
14. In relation to Paragraphs 1 and 8, Ms. Frankie submitted that the claims for reimbursement for personal purchases of items for a Kier project notably each came to under the £100 threshold. The consequences were that they had not been subject to the need for manager approval. This, she submitted was a feature of a number of the Paragraphs of the charge and invited the Panel to infer that had been a deliberate act on behalf of the Member to avoid detection of nefarious claims. She noted that in his correspondence with RICS the Member said he had claimed the money back after purchasing items for the Pilgrim project in Lincolnshire, not the Magenta project in the Wirral, as alleged by Kier. However, Ms. Frankie submitted that this had not been mentioned to Kier in the interview and was an example of the Member changing his story to fit the evidence known at the time. She further submitted that the interview account was far closer to the truth in reality than his account to RICS, and amounted to at least partial admissions.

15. In relation to Paragraphs 2 and 9 Ms. Frankie took the Panel to the Member's Kier interview in which he accepted that whilst some of the taxi receipts were legitimate, some were done to bolster his salary. She noted that his account changed in correspondence with RICS in which he had variously claimed the Kier claim system was at fault and that he only used taxis as he was working so far from home and had to do so. This was in spite of his manager attesting to the fact that the Member had no need to use taxis and had a company car. Once again, the claims made were each under the £100 threshold.
16. In relation to Paragraphs 3 and 4, Ms. Frankie submitted that the original receipts were false and they had then been doctored and provided afresh and were also false. In his Kier interview the Member had admitted to having a blank book of taxi receipts and writing receipts himself. He further admitted amending the receipts from 14 and 15 June to 24 and 25 June respectively. Both receipts were to the value of £49.25 for a purported 3.1 mile journey from Liverpool Lime Street station to the project he was working on. Ms. Frankie submitted that not only did the Member lie about the amount but he admitted the journeys did not take place during the Kier interview. Ms. Frankie noted the Member's change in account in his correspondence with RICS, in which he asserted all the taxi receipts were genuine. Again Ms. Frankie noted that the receipts each came under the £100 threshold, with the most expensive being for £98.50.
17. In relation to Paragraphs 5 and 10, Ms. Frankie submitted that there was clear evidence to show the toll tunnel cost £1.80 a journey. The claims submitted were for £3.00 per journey. They were clearly wrong. She further submitted there was clear evidence in the form of maps produced by Kier showing that the Member did not need to go in the tunnel to get to the project. She noted that in his Kier interview the Member had said he took the journeys in order to visit the Magenta project in the Wirral. When it was put to him he wouldn't have needed to use the tunnel, the Member accepted he had not needed to and had not used it 266 times. That Ms. Frankie submitted, was in stark contrast to his answers to RICS in which he asserted that he had put coins to the value of £3.00 in on each occasion he travelled through the tunnel and received no change. Further, he asserted he had not submitted all the receipts only some. Those he had submitted were accurate.
18. In relation to Paragraphs 6 and 11 Ms. Frankie submitted that the Member had again been inconsistent. He had told Kier that he had submitted duplicate claims, but told RICS he had made an administrative error and would have repaid the amount, before later asserting he never made the claims, save perhaps the first, legitimate, claim.
19. In relation to Paragraphs 7 and 12, Ms. Frankie submitted that the total value of the amount of materials ordered was £2968.11. Those materials were all sent to the Member's home address. From that address he traded as Walden Construction Services. There was also building work planned for that home address. Ordering the materials as he had done was against company policy. Ms. Frankie further submitted that the account the Member gave to

RICS that the materials were all for the Pilgrim hospital project in Lincolnshire was far-fetched and untrue. There was no need for him to have had materials delivered to his home address.

20. Ms. Frankie concluded her submissions by noting that the Member had made sweeping admissions in his Kier interview that he now sought to deviate from. He had admitted keeping expenses below £100 meant they got approved. He admitted that the expenses were not legitimate and that he had sought to bolster his income. That, Ms. Frankie submitted was the truth, not the attempts he had now made to distance himself from those admissions and suggest that either the claims were legitimate or the Kier systems were not working properly, with positions he had chosen not to advance at the time.
21. In addressing the Panel on the Member's liability to disciplinary action Ms. Frankie submitted that there was no burden of proof, that there was a threshold of seriousness - trivial breaches of rules would not amount to liability to disciplinary action. She submitted that the dishonesty and lack of integrity in this case were so serious that they constituted liability individually. It followed that cumulatively they must also render the Member liable to disciplinary action.
22. The Panel received and accepted the advice of the Legal Advisor. It was advised that RICS bore the burden of proof and the standard to be applied was the balance of probabilities. In addressing the issue of dishonesty, the Panel was advised to adopt the test set out in *Ivey v Genting Casinos [2017] UKSC 67*. In so far as lack of integrity was concerned the Panel was advised to adopt the definition set out in the case of *Wingate and Others v SRA [2018] EWCA Civ 366*.
23. Thereafter the Panel was advised that if it found any of the Paragraphs of the charge proved it should go on to consider whether that rendered the Member liable to disciplinary action. The Panel was advised that for such a liability to exist the identified conduct must be serious, and was advised to adopt the approach in *Roylance v GMC [2000] 1 AC 311* & *Nandi v GMC [2004] EWHC 2317*, liability to disciplinary action being akin to the definition of misconduct in those proceedings.

Determination on the Facts

Paragraphs 1 & 8 - Claims for Personal Expenses Incurred on site

24. The Panel considered the 41 expenses claims identified by Kier through its investigation. It noted that all the claims made were for under £100, in particular there was a claim for a drill in the sum of £99.99. Consequently, none of the expenses would have been subject to management approval. Moreover, the Panel noted that the Member had admitted making claims during the course of his Kier interview, The Panel carefully considered that interview both in relation to these Paragraphs and generally.

25. It noted the Member's objection to the content of the interview note and his assertion that it was wrong. However, the Panel also noted that the Member had chosen not to identify which passages he asserted were wrong or to identify which assertions made by him were incorrectly noted. In the absence of any evidence to demonstrate the inaccuracy of the note, and in the absence of any specifics as to the inaccuracies alleged by the Member, the Panel concluded it had no reason not to accept the accuracy of the note of interview. It determined that notwithstanding its acceptance of the note in broad terms, it would proceed assiduously in assessing its credibility and reliability by reference to other sources of evidence before it.
26. The Panel noted that in relation to the expenses claims reflected in Paragraphs 1 and 8 the Member had materially altered his position from the Kier interview. To RICS he had variously asserted he did not make the claims, and that he did make the claims but in relation to a different project. The Panel noted that whilst RICS bore the burden of proof the Member had provided no evidence to support his expenses claims. The Panel was therefore left with conflicting and inconsistent accounts from the Member, evidence from his manager at Kier that he should not have made any claims and the Member's general admission in his Kier interview that he was bolstering his income by making claims that were not accurate.
27. The Panel therefore concluded that on the balance of probabilities the Member did make the claims as alleged, and that his account in the Kier interview was closer to the truth than his subsequent correspondence with RICS. The Panel further concluded that the inference to be drawn from his inconsistent position, taken together with the value of each claim being below the £100 threshold meant it was more likely than not that he was claiming dishonestly, in short that his genuine belief was that he had no entitlement to claim for expenses he had not incurred but did so. The Panel was in no doubt ordinary and decent people would consider such behaviour dishonest.
28. It followed from the Panel's finding that in behaving dishonestly the Member had failed to demonstrate steady adherence to the ethical standards of the profession and thereby his conduct in this regard lacked integrity.
29. The Panel therefore found Paragraphs 1 and 8 proved.

Paragraphs 2 & 9 - Taxi Claims

30. The Panel noted the evidence gathered by Kier and the total of 99 taxi journeys claimed by the Member, totalling £2,688. It noted the stance Kier took that there had been no need for the Member to take any taxi journeys for his work; he had a company car. Even if he had to take such journeys they could only have been a total of 3.1 miles in distance, which did not accord with the total fares he had submitted.

31. The Panel noted the answers given by the Member in the Kier interview in which he was silent about whether he submitted the expenses or not. It further noted his general admission that he had been bolstering his income and had a book of blank taxi receipts that he would write from time to time. The Panel further noted that in correspondence with RICS the Member asserted the claims would not have been paid had they been false. The Panel rejected that assertion noting that the claims each individually totalled less than £100, so would have been subject to no approval system.
32. In circumstances where there was no need for the Member to take a taxi to work, and where he had admitted writing his own taxi receipts on occasion, the Panel were compelled to conclude he had claimed for journeys he had not taken for any legitimate business reason.
33. The Panel further concluded that the Member's genuine belief could only have been that he was not entitled to claim but did so regardless, conduct that ordinary decent people would consider dishonest.
34. It followed from the Panel's finding that in behaving dishonestly the Member had failed to demonstrate steady adherence to the ethical standards of the profession and thereby his conduct in this regard lacked integrity.
35. The Panel therefore found Paragraphs 2 and 9 proved.

Paragraph 3 - Taxi Receipts for 14 and 15 June 2019

36. The Panel noted the Member's admission in the Kier interview that he had written the two receipts dated 14 and 15 June 2019. On their face those receipts purported to be written by a taxi driver contracting with the Member as a passenger and issuing a receipt for payment. They were not. On that basis alone the factual elements of Paragraph 3 were proved.
37. However, the Panel further determined that even if the author of the receipt was immaterial there was no evidence of the Member taking any taxi journeys for business purposes such that he was entitled to claim it from his employer. To the contrary, there was cogent evidence from his employers that he did not need to take a taxi journey for the work he was engaged in at the time. Moreover, the 15 June 2019 was a Saturday and the Member did not work on a Saturday.
38. The Panel concluded that the irresistible inference to be drawn was that the Member had written the receipts himself and submitted them either having not taken the taxi journeys at all, or having taken journeys not for business purposes. His genuine belief could only have been that he was not entitled to claim from his employer for the receipts, but that he did so anyway. That behaviour was bound to be seen as dishonest by ordinary and decent people.

On the balance of probabilities the Panel therefore considered that the Member had been dishonest in submitting the taxi receipts for 14 and 15 June 2019.

39. The Panel therefore found Paragraph 3 proved.

Paragraph 4 - Taxi Receipts 24 and 25 June 2019

40. The Panel noted that the receipts were strikingly similar in appearance. However, it would be wrong to speculate on whether the receipts bore the same handwriting, given no handwriting expert evidence was before it. What was clear though, was that the receipt in Paragraph 3 above for 14 June 2019 bore an extremely similar red smudge as the receipt for 24 June 2019 in paragraph 4. The two were for the same amounts and the only difference was the date of 14 June changing to 24 June.

41. The Panel noted the 15 June 2019 receipts in Paragraph 3 was similar to the 25 June 2019 receipt in paragraph 4, the only content change being that the 15 June was now 25 June.

42. Taking that evidence together with the Member's answers in his Kier interview in which he admitted amending the 14 and 15 June receipts and submitting them afresh with the dates 24 and 25 June on them, the Panel concluded that on the balance of probabilities Paragraph 4 was proved as a matter of fact.

43. The Panel determined that the Member must genuinely have known that he was amending receipts for expenses and making claims when he was not entitled to. Such behaviour would doubtless be considered dishonest by ordinary, decent people. The Panel therefore determined his behaviour in this regard was dishonest.

44. The Panel therefore found Paragraph 4 proved.

Paragraphs 5 & 10 - Toll Tunnel Payments

45. The Panel noted that the evidence showed 280 toll tunnel payments being claimed. The Panel noted also that the sum claimed in the majority was a figure of £3.00. On the face of it, this was incorrect as the toll at the time was £1.80. Notwithstanding that obvious issue with the claims, and the inflating of claims by £1.20 per journey, the Member's account was that he did not have the correct change and so could only put in £3.00 per time and received no change. Such an account on any analysis was plainly deficient. It took no account of the denominations of British currency. It was a wholly implausible assertion that paying a £1.80 fee with coins would require the insertion of £3.00.

46. The clear evidence from Kier that the Member was not required to travel through the tunnel to get to the project he was assigned to, meant there could be no justification for any such expenses, whether billed at £3.00 or the correct figure of £1.80. Taken with the apparent admission the Member made in his interview with Kier that at least some of the claims were to bolster his salary, left the Panel in little doubt that he had made some if not all of the claims knowing they were not legitimate business expenses. Whilst the Panel could not be certain that some of the claims had not been genuine it considered that on the balance of probabilities the vast majority were illegitimate claims.
47. The Panel was in little doubt that given the Member's genuine belief, ordinary, decent members of the public would consider his behaviour dishonest.
48. It followed from the Panel's finding that in behaving dishonestly the Member had failed to demonstrate steady adherence to the ethical standards of the profession and thereby his conduct in this regard lacked integrity.
49. The Panel therefore found Paragraphs 5 and 10 proved.

Paragraphs 6 & 11 - Eye Tests

50. The Panel noted that the Member had claimed for 7 eye tests (or a contribution to eye tests) of £20 each. Those would not have been subject to approval. The Panel also noted that the first of those tests would certainly have been permissible under the Kier expenses policy. It was therefore inaccurate to allege that all seven were duplicates, the first having been the original claim.
51. The Panel noted the dates on which the claims were submitted. All occurred within a very short time frame of a fortnight. The Panel considered this to be significant. It considered it implausible the Member would have required 7 eye tests in such a short space of time.
52. It noted that the Member's response to the RICS investigation had been to initially offer to repay it, before later asserting he hadn't submitted the claim on the number of occasions alleged.
53. In light of the evidence of the days of submission, the Panel was of the clear view that the Member had submitted the 6 claims following the first claim knowing he was not entitled to make a second claim for the same expense. Given that genuine state of knowledge, the Panel determined that by the standards of ordinary, decent people his behaviour was dishonest.
54. It followed from the Panel's finding that in behaving dishonestly the Member had failed to demonstrate steady adherence to the ethical standards of the profession and thereby his conduct in this regard lacked integrity.

55. The Panel therefore found Paragraphs 6 and 11 proved.

Paragraphs 7 & 12 - Materials for Personal Use

56. The Panel noted these Paragraphs concerned 12 transactions charged to Kier for materials that were in fact delivered to his home address. It noted the evidence of work at his home address and that he conducted a separate construction business from that address. Whilst it accepted that provided a motive for the Member to be appropriating materials, it did not accept there was evidence that he had in fact appropriated such materials.

57. To the contrary the Member's account in this regard was that he had some site materials delivered to his address because of space restrictions on the site. His home address was in Boston, Lincolnshire. The site was also in Boston Lincolnshire.

58. The Panel reminded itself that it is for RICS to prove the case. In spite of bearing that burden the Panel could find no evidence to indicate that the Member had used the materials subject to the 12 transactions for his own personal use. Unlike the other claims made, at least one or other of the transactions would have totalled over £100 and been susceptible to internal sign-off. Clearly that had not identified any issue. Whilst that was not conclusive, it did lend support to the Member's assertion that he had legitimately used his home address for delivery off site materials.

59. In the circumstances the Panel therefore determined there was insufficient evidence to conclude that on the balance of probabilities the Member had submitted dishonest claims for materials or behaved in a way that lacked integrity.

60. The Panel therefore found Paragraphs 7 & 12 not proved.

Liability to Disciplinary Action

61. Having found Paragraphs 1 - 6 and 8 - 11 proved the Panel considered whether the facts rendered the Member liable to disciplinary action.

62. The Panel noted that it had found proved six separate incidents of dishonesty, each spanning a number of transactions. The period involved was protracted.

63. The Panel were particularly concerned by the apparent willingness the Member had demonstrated to serially make dishonest claims against his employer, apparently to bolster his own income.

64. The Panel considered that the facts found proved demonstrated serious and persistent breaches on multiple occasions, over a prolonged period of time demonstrating both a lack of integrity and dishonesty.

65. In the circumstances the Panel were in no doubt that the facts as found proved rendered the Member liable to disciplinary action.

Sanction

66. The Panel next turned to consider sanction.

Submissions

67. Ms. Frankie on behalf of RICS made no positive submission as to the necessary sanction. She submitted that the Panel should adopt a proportionate approach and commended the Sanctions Policy to the Panel. She drew the Panel's attention to the listed aggravating and mitigating factors.

68. Ms. Frankie further submitted that dishonesty whilst always serious was on a continuum from less serious to more serious. She submitted that the Member's conduct in this case was towards the more serious end. It was premeditated and sustained dishonesty, leading to personal financial benefit.

69. In mitigation she submitted the Member had no previous disciplinary history and the loss was to his employer not a private client.

Determination

70. The Panel received and accepted the advice of the legal assessor. The Panel was advised that in considering sanction there is no burden or standard of proof. The question of sanction is a matter for the Panel's judgment. The Panel was advised that having found liability to disciplinary action, it was required to consider what if any sanction to impose. It was advised

that the purpose of sanctions is not to be punitive but to protect the public and the public interest in the wider sense, namely to maintain public confidence in the profession and to declare and uphold standards.

71. The Panel was reminded that in deciding upon sanction it should have regard to the Sanctions policy, and apply the principle of proportionality, weighing the interests of the public with those of the practitioner and taking the minimum action necessary to protect the public and the wider public interest.
72. The Committee began by identifying the aggravating and mitigating factors present. It considered that the conduct was aggravated by the length of time it persisted, in the region of nine months. It represented a sustained and deliberate abuse of an employer's trust. In particular, it sought to exploit the trust the company placed in employees in relation to expenses claims under £100. The proven elements of the charge comprised serious dishonesty in breach of trust which represented a financial gain to the Member of several thousand pounds.
73. In his mitigation the Panel accepted that the Member had no previous disciplinary history. Whilst he had made at least partial admissions initially, the weight to be attached to his admissions was significantly reduced by reason of his recanting of those admissions during RICS' investigation. The Panel noted reference in the Member's correspondence to "personal issues." Nothing within the correspondence disclosed the nature or extent of those issues. The Panel therefore took into account that the Member had clearly been suffering from some background difficulties, but the Panel could attach only minimal weight to those issues, in light of the lack of any evidence about the position. The Panel further noted that the Member had been subject to investigation for a very considerable period of time. The Panel considered that provided significant mitigation to his position, given that the proceedings had doubtless caused him material concern and difficulty.
74. Having assessed the mitigating and aggravating factors the Panel next considered the risk to the public. The Member had demonstrated an extremely limited level of insight into what was serious and persistent dishonesty perpetrated for his own financial gain. The lack of any insight or remorse for his behaviour meant the risk to the public and in particular to clients for whom the Member might hold money, was very real. The Panel considered there was no information before it that could enable it to assess the risk at anything other than high.
75. The Panel next considered the possible sanctions available to it, in ascending order of seriousness. In light of the fundamental and persistent nature of the findings made the Panel was in no doubt that the sanctions of caution and reprimand were both insufficient to properly protect the public and insufficient to safeguard the wider public interest.

76. The Panel next considered undertakings. It considered that no undertakings could be enforceable and in the absence of the Member from proceedings the Panel was unable to properly assess whether undertakings would be workable and complied with.
77. The Panel next considered conditions. It concluded that in this case conditions were both unworkable and immeasurable such that they were neither appropriate nor did they meet the public interest requirements.
78. The Panel next considered whether to fine the Member. It considered that whilst a fine at the appropriate level might go some way to marking the gravity of the Member's conduct, it was insufficient to properly assure public confidence in the profession and the upholding and declaring of standards. A fine would do nothing to protect the public.
79. The Panel next considered expulsion from the profession. It determined this was the minimum sanction available to it to ensure the public were protected from a professional who had demonstrated a cavalier disregard for the truth, had abused his position as a trusted employee and persistently sought to dishonestly gain for himself over a period of nine months. Whilst the Panel had some sympathy with him for the delay in the case being concluded, it could not escape the conclusion that the conduct found proved was fundamentally incompatible with continued membership of the Institute.
80. The Panel therefore concluded that the Member should be expelled from membership.

Costs

81. The Panel noted the costs application from RICS in the sum of £13,552.50. It also noted the statement of means provided by the Member. In the circumstances the Panel concluded it should make a costs order in the sum of £9000 to take account of the reduction in the hearing length from that envisaged in the costs schedule, and to reflect the Member's limited means.

Publicity

82. The Panel noted there is a presumption in favour of publicity. In the absence of any factors indicating publicity was not appropriate, the Panel determined to make an order for publicity in accordance with the publication policy.